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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 541

JOHN CARRIER AND J. HARVEY CARPENTER, GUARDIAN OF JOHN CARRIER, INCOMPETENT VETERAN, PETITIONERS,

vs.

CURLEY BRYANT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

PETITION FOR CERTIORARI FILED DECEMBER 23, 1938.

CERTIORARI GRANTED JANUARY 30, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No.

JOHN CARRIER AND J. HARVEY CARPENTER, GUARDIAN OF JOHN CARRIER, INCOMPETENT VETERAN, PETITIONERS,

vs.

CURLEY BRYANT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

INDEX.

	Original	Print
Proceedings in Supreme Court of North Carolina	1	1
Caption (omitted in printing)	1	
Record from Superior Court of Rutherford County	1	1
Affidavit and motion for restraining order	1	1
Answer to affidavit and motion	3	3
Exhibit "A"—Annual accounting of estate of John Carrier	4	4
Order dissolving restraining order, etc.	6	5
Appeal entries	7	7
Assignments of error	8	7
Clerk's certificate (omitted in printing)	8	
Recital as to appeal bond	9	8
Judgment	10	8
Opinion, Clarkson, J.	11	9
Docket entries	20	16
Clerk's certificate	20	16
Order allowing certiorari	21	17

[fol. 1] [Caption omitted]

IN SUPERIOR COURT OF RUTHERFORD COUNTY

CURLEY BRYANT

v.

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier

AFFIDAVIT AND MOTION FOR RESTRAINING ORDER

J. Harvey Carpenter, Guardian of John Carrier, defendant in the above entitled action, being first duly sworn, deposes and says:

1. That the above entitled action was tried at the June-July Term of Superior Court of Rutherford County, before His Honor, S. J. Ervin, Jr., and a jury, and upon the verdict of the jury judgment was rendered therein awarding to the plaintiff the sum of $1,500.00 as will appear by reference to said judgment.

2. This action was brought by the plaintiff against the defendant, John Carrier, for damages for alienation of the affections of the plaintiff's wife and for criminal conversation and your affiant hereby refers to the pleadings and other papers in said action and by reference to same are hereby made a part hereof.

3. That the defendant gave notice of appeal in open court from the judgment referred to above and was allowed forty [fol. 2] days in which to make and serve case on appeal; that the defendant has executed and filed appeal bond as provided by order of the Court and his counsel are engaged in the preparation of the case on appeal and intend to perfect the same as provided by law.

4. That the plaintiff has, through his counsel caused an execution to be issued by the Clerk of Superior Court of Rutherford County upon the above mentioned judgment and has placed same in the hands of the Sheriff of Rutherford County who is now threatening to levy upon all of the property of the defendant, John Carrier, to satisfy same.

5. That as affiant is advised and believes, and therefore, alleges all of the property owned by the defendant, John Carrier, is now in the hands and custody of this affiant as Guardian of the said John Carrier, and that all of said property represents the proceeds of war risk insurance and compensation paid to said John Carrier by the United States Government by virtue of a War Risk Insurance Policy issued to said John Carrier and by virtue of compensation paid to him on account of Service Connected disabilities suffered by him while in the active service of the United States as a soldier in the World War.

6. That as affiant is advised and believes, and therefore, alleges, all of the property belonging to said John Carrier, being the proceeds of said War Risk Insurance Policy and compensation or investments purchased with the proceeds of such War Risk Insurance and compensation, is exempt from levy under execution by virtue of the above mentioned judgment or from any other process issued upon said judgment under the provisions of Section 454-a of Title 38 U. S. Code Annotated, which is hereby specifically referred to and by such reference made a part hereof.

7. That the plaintiff, Curley Bryant, is utterly and totally insolvent and if allowed to levy upon the property of the [fol. 3] defendant, John Carrier, under said execution and collect the amount of said judgment under said execution the defendant will be irreparably damaged.

Wherefore, affiant prays the Court:

1. To issue a restraining order in this cause, restraining and enjoining the plaintiff, his agents, attorneys and servants, including the Sheriff of Rutherford County from proceeding further under the execution above referred to until further orders of the Court; and

2. For such other and further relief as to the Court may seem just and proper in the premises.

Edwards & Edwards, Attorneys for Defendants.

(Verified 8/17/38.)

IN SUPERIOR COURT OF RUTHERFORD COUNTY

ANSWER TO AFFIDAVIT AND MOTION

The plaintiff, Curley Bryant, answering the affidavit and motion of John Carrier, and J. H. Carpenter, Guardian of John Carrier, for his answer says:

1. That the allegations contained in paragraph 1 of defendants' affidavit and motion are not denied.

2. That the allegations contained in paragraph 2 of said affidavit and motion are not denied.

3. That the allegations contained in paragraph 3 of defendants' affidavit and motion are not denied.

4. That the allegations contained in paragraph 4 of defendants' affidavit and motion are admitted.

5. That this plaintiff has not sufficient information upon which to form an opinion or belief as to the truth or falsity of the allegations contained in paragraph 5 of said affidavit and motion, and for the purpose of this action denies the same.

6. That the allegations contained in paragraph 6 of defendants' affidavit and motion are untrue and are denied.

7. That the allegations contained in paragraph 7 of said [fol. 4] affidavit and motion are untrue and are denied.

And for a Further Answer and Defense to defendants' affidavit and motion, this plaintiff avers and alleges:

That J. Harvey Carpenter, guardian for John Carrier, in his report filed the 15th day of February, 1938, shows that the said John Carrier has in investments in U. S. Savings Bonds the sum of $8,350.00, and that he holds the notes of Jesse Sane, W. C. McRorie and T. C. Miller in the sum of $3,997.00, and that the only cash on hand in bank represents proceeds from his compensation and insurance, in the sum of $260.95; that under the statutes of the United States the said funds representing investments of John Carrier are subject to execution and, therefore, pending the appeal the plaintiff is entitled to a supersedeas bond for

the payment of said judgment, or in the event that the defendants fail to put up the same, to execution and sale of the property of the said John Carrier; a copy of said Annual report being hereto attached and marked "Exhibit A" and made a part and parcel of this paragraph of this further answer.

Wherefore, this plaintiff, having fully answered the affidavit and motion of the defendants, prays that the temporary restraining order heretofore issued be dissolved.

Hamrick & Hamrick, Attorneys for Plaintiff.

(Verified 8/23/38.)

EXHIBIT "A" TO ANSWER

Investments	Purchase Price
U. S. Savings Bond No. M-193398 B	$750.00
U. S. Savings Bond No. M-193397 B	750.00
U. S. Savings Bond No. M-193396 B	750.00
U. S. Savings Bond No. M-193395 B	750.00
U. S. Savings Bond No. M-49241 B	750.00
U. S. Savings Bond No. M-193400 B	750.00
U. S. Savings Bond No. M-193399 B	750.00
U. S. Savings Bond No. D-59466 B	375.00
U. S. Savings Bond No. D-284491 B	375.00
[fol. 5] U. S. Savings Bond No. M-375593 B	750.00
U. S. Savings Bond No. M-64431 C	750.00
U. S. Savings Bond No. D-80257 C	375.00
U. S. Savings Bond No. D-217183 C	375.00
U. S. Adjusted Serv. Bond No. 26329536	50.00
U. S. Adjusted Serv. Bond No. 26329537	50.00
	$8,350.00

The following balances on notes turned over to Fiduciary from Administrators of former Guardian are now held as property of ward:

Jesse Saine	$69.00	and interest
W. C. McRorie	800.00	and interest
S. M. Long	1678.00	and interest
T. C. Miller	1450.00	(This note considered worthless after exhaustive investigation.)
	$3997.00	

Total Receipts	$1743.51
Total Disbursements	1478.56

Cash Balance: $264.95 is on deposit as follows:

Checking Account:	$264.55	Name of Bank: Union Trust Co.
Savings Account:	.40	Name of Bank: First Industrial Bank.

J. Harvey Carpenter, being duly sworn, says: That the foregoing annual accounting of the estate of John Carrier, incompetent, is true and accurate to the best of his knowledge and belief.

(Signed) J. Harvey Carpenter, Fiduciary.

Subscribed and sworn to before me, this 15th day of February, 1938. F. S. Hall, C. S. C.

I hereby certify that I have made an examination of all investments and bank statements showing cash balance in [fol. 6] this case as required by Section 2202 (10) of the North Carolina Statutes, as amended April 11, 1933, and same are correctly stated in the accounting.

F. S. Hall, Clerk Superior Court.

IN SUPERIOR COURT OF RUTHERFORD COUNTY

ORDER DISSOLVING RESTRAINING ORDER, ETC.

This cause coming on to be heard before J. Will Pless, Jr., Resident Judge of the 18th Judicial District, on the return date, and being heard upon the application of J. Harvey Carpenter, Guardian of John Carrier, for the continuance of the Restraining Order heretofore issued,

and being heard, and it appearing to the Court, and the Court finding as a fact that the plaintiff, Curley Bryant, has obtained judgment in the Superior Court of Rutherford County against the defendant John Carrier in the sum of $1500.00, on account of the alleged alienations of the affections and criminal conversation with the wife of said Bryant, and said cause is now pending on appeal to the Supreme Court of North Carolina; the defendant having filed no supersedeas bond to stay execution thereon, that the plaintiff has caused execution to issue; and

It further appearing to the Court and the Court finding as a fact that the defendant, John Carrier, is a World War veteran and that he is the owner of United States bonds of the principal value of $8397.00 and of promissory notes of the face value of $3997.00, which are investments made for him by his Guardian from the proceeds of moneys paid to him by the United States Government on account of his disability incurred and insurance in the World War.

The defendant invokes Section 454 and Section 454-a, Title 38, U. S. C. A., and contends that under the terms thereof, the property above referred to is exempt from execution, which contention is denied by the plaintiff.

The Court is of the opinion, and so holds, that the prop-
[fol. 7] erty above referred to now constitutes an investment and has lost its character as "payment of benefit", and is, therefore, subject to execution upon the facts herein presented and found.

Upon said holdings, the Court dissolves the injunction, having first required that the plaintiff give a justified bond in the sum of $2,000.00, to be approved by the Clerk of the Superior Court of Rutherford County to indemnify the defendant for any loss he may sustain upon the execution sought, in the event it shall be hereafter determined that said property is exempt from execution.

It it now, therefore, Ordered, Adjudged and Decreed that the Restraining Order heretofore issued be, and the same is hereby dissolved, and the plaintiff is authorized to proceed with execution as he may be advised.

This order, however, is subject to the requirement and condition that before said execution shall be levied that the plaintiff shall file with the Clerk of the Superior Court of Rutherford County justified bond in the sum of $2,000 to be approved by said Clerk, providing that in the event it shall

hereafter be determined that the properties sold under execution were exempt therefrom, that the plaintiff will reimburse immediately the defendant for all monies received by virtue of said execution, together with interest thereon and costs.

This August 24, 1938.

J. Will Pless, Jr., Resident Judge of the 18th Judicial District.

IN SUPERIOR COURT OF RUTHERFORD COUNTY

APPEAL ENTRIES

To the foregoing order the defendant excepts and gives notice of appeal to the Supreme Court. Further notice waived, and appeal bond fixed in the sum of $50.00.

[fol. 8] It is agreed that the affidavit and motion, the answer thereto, including page 3 of the Guardian's Report as attached to said Answer, and this order shall constitute the case on appeal.

J. Will Pless, Jr., Resident Judge of the 18th Judicial District.

IN SUPERIOR COURT OF RUTHERFORD COUNTY

ASSIGNMENTS OF ERROR

The defendants make and group the following assignments of error in the foregoing case, to-wit:

1. The Court committed error in holding that the Government bonds and notes set forth in the inventory filed by J. Harvey Carpenter which is shown and referred to as Investments (on pages 4-5) of the case on appeal are subject to execution.

This constitutes Defendants' Exception #1.

2. That the Court committed error in dissolving the injunction theretofore issued for the reason that said assets and property of the defendant, John Carrier, appellant, is not subject to execution under and by virtue of Sections 454 and 454-a of Title 38 U. S. C. A. said Statute exempting said assets from sale under execution.

This constitutes defendants' Exception #2.

3. That the Court erred in denying the appellants' motion to continue the Restraining Order in said cause and in dissolving the same.

This constitutes defendants' Exception #3.

[fol. 9] Clerk's certificate to foregoing transcript omitted in printing.

(Appeal Bond in the sum of $50.00 filed.)

[fol. 10] IN SUPREME COURT OF NORTH CAROLINA, RUTHERFORD COUNTY, FALL TERM, 1938

No. 172

CURLEY BRYANT

vs.

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier

JUDGMENT—September 28, 1938

This cause came on to be argued upon the transcript of the record from the Superior Court of Rutherford County: upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is, therefore, considered and adjudged by the Court here, that the opinion of the Court, as delivered by the Honorable Herriot Clarkson, Justice, be certified to the said Superior Court, to the intent that the judgment is affirmed.

And it is considered and adjudged further, that the Defendants and Surety W. O. Gue do pay the costs of the appeal in this Court incurred, to-wit, the sum of Twenty-three 00/100 dollars ($23.00), and execution issue therefor.

A True Copy,

Edward Murray, Clerk of the Supreme Court. (Seal of the Supreme Court of the State of North Carolina.)

[fol. 11] IN SUPREME COURT OF NORTH CAROLINA

No. 172

CURLEY BRYANT

v.

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier

OPINION—Filed September 28, 1938

Appeal by defendants from Pless, Jr., J., at Chambers, August 24, 1938, from Rutherford Superior Court. Affirmed.

The order of Pless, Jr., J., indicates the controversy, and is as follows:

"This cause coming on to be heard before J. Will Pless, Jr., Resident Judge of the 18th Judicial District, on the return date, and being heard upon the application of J. Harvey Carpenter, Guardian of John Carrier, for the continuance of the Restraining Order heretofore issued, and being heard, and it appearing to the Court, and the Court finding as a fact that the plaintiff, Curley Bryant, has obtained judgment in the Superior Court of Rutherford County against the defendant John Carrier in the sum of $1500.00 (This judgment has been affirmed—see opinion at this term), on account of the alleged alienations of the affections and criminal conversation with the wife of said Bryant, and said cause is now pending on appeal to the Supreme Court of North Carolina; the defendant having filed no supersedeas bond to stay execution thereon, that the plaintiff has caused execution to issue; and

It further appearing to the Court and the Court finding as a fact that the defendant, John Carrier, is a World War veteran and that he is the owner of United States bonds of the principal value of $8397.00 and of promissory notes of the face value of $3997.00, which are investments made for him by his Guardian from the proceeds of moneys paid to him by the United States Government on account of his disability incurred and insurance in the World War.

The defendant invokes Section 454 and Section 454-a, [fol. 12] Title 38, U. S. C. A., and contends that under the terms thereof, the property above referred to is exempt from execution, which contention is denied by the plaintiff.

The Court is of the opinion and so holds, that the property above referred to now constitutes an investment and has lost its character as 'payment of benefit', and is therefore, subject to execution upon the facts herein presented and found.

Upon said holdings, the Court dissolves the injunction, having first required that the plaintiff give a justified bond in the sum of $2,000.00, to be approved by the Clerk of the Superior Court of Rutherford County to indemnify the defendant fro- any loss he may sustain upon the execution sought, in the event it shall be hereafter determined that said property is exempt from execution.

It is now, therefore, Ordered, Adjudged and Decreed that the Restraining Order heretofore issued be, and the same is hereby dissolved, and the plaintiff is authorized to proceed with execution as he may be advised.

This order, however, is subject to the requirement and condition that before said execution shall be levied that the plaintiff shall file with the Clerk of the Superior Court of Rutherford County justified bond in the sum of $2,000 to be approved by said Clerk, providing that in the event it shall hereafter be determined that the properties sold under execution were exempt therefrom, that the plaintiff will reimburse immediately the defendant for all monies received by virtue of said execution, together with interest thereon and costs. This August 24, 1938. J. Will Pless, Jr., Resident Judge of the 18th Judicial District."

The defendants excepted and assigned error as follows: "(1) The Court committed error in holding that the Government bonds and notes set forth in the inventory filed by J. Harvey Carpenter which is shown and referred to as Investments are subject to execution. (2) That the Court committed error in dissolving the injunction theretofore issued for the reason that said assets and property of the defendant, John Carrier, appellant, is not subject to execution under and by virtue of Sections 454 and 454-a of Title 38, [fol. 13] U. S. C. A., said Statute exempting said assets from sale under execution. (3) That the Court erred in denying the appellants' motion to continue the Restraining Order in said cause and in dissolving the same."

Defendants appealed to the Supreme Court.

Hamrick & Hamrick, for plaintiff.
Edwards & Edwards, for defendants.

CLARKSON, J.:

The question involved: Are investments in negotiable notes and in United States Bonds purchased with "payments of benefits" under the laws relating to World War Veterans, exempt from execution on a judgment against the veteran? We think not.

The defendant, John Carrier, is a World War Veteran, and owns United States Bonds in the principal amount of $8,350.00, and promissory notes of the face value of $3,997.00. These are investments made for the defendant by his guardian from the proceeds of money paid to him by the United States Government on account of his disability incurred and insurance in the World War. These bonds and notes are shown as investments in the report of the guardian of the defendant, filed with the Clerk of the Superior Court of Rutherford County on February 15, 1938. The investments are set forth in the pleadings.

What is said in United States v. Hall, 98 U. S., at p. 346, is well worth repeating:

"Power to grant pensions is not controverted, nor can it well be, as it was exercised by the states and by the Continental Congress during the War of the Revolution; and the exercise of the power is coeval with the organization of the government under the present Constitution, and has been continued without interruption or question to the present time. * * * (p. 350). Such laws had their origin in the patriotic service, great hardship, severe suffering, and physical disabilities contracted while in the public service by the officers, soldiers, and seamen who spent their property, lost their health, and gave their time for their country [fol. 14] in the great struggle for liberty and independence, without adequate or substantial compensation. * * * (p. 351). Bounties may be offered to promote enlistments, and pensions to the wounded and disabled may be promised as like inducements. Past services may also be compensated, and pensions may also be granted to those who were wounded, disabled, or otherwise rendered invalids while in the public service, even in cases where no prior promise was made or antecedent inducement held out." Hinton v. State Treasurer, 193 N. C., 496 (508)."

The power of Congress to exempt from taxation and creditors is not questioned. The Court below held that "the

property above referred to now constitutes an investment and has lost its character as 'payment of benefit', and is, therefore, subject to execution upon the facts herein presented and found."

What is the Federal Law on the subject? The former Act of 1924, Federal Statute 38, U. S. C. A., Sec. 454, reads as follows:

"Assignability and exempt status of compensation, insurance, and maintenance and support allowances. The compensation, insurance, and maintenance and support allowance payable under Parts II, III and IV, respectively, shall not be assignable; shall not be subject to the claim of creditors of any person to whom an award is made under Parts II, III or IV; and shall be exempt from all taxation. Such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable."

The 1935 Act, Sec. 454-a, Title 38 U. S. C. A., has the following language:

"Assignability and exempt status of payments of benefits. Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, [fol. 15] levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments."

In the case of Trotter v. Tennessee, 290 U. S. 354, 78 L. ed. 358 (1933), the facts were: A veteran in Tennessee purchased land with money received from the United States Government as compensation for his services in the World War. The State of Tennessee sought to tax this property. The Supreme Court of the United States held that when the

veteran invested his money in land, the money lost its identity as money, and lost its immunity under the statute. At page 360, L. Ed., Mr. Justice Cardozo, writing for the Court says:

"The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. McIntosh v. Aubrey, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561. We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. CF. McIntosh v. Aubrey, supra; State ex rel. Smith v. Shawnee County, 132 Kan. 233, 294 Pac. 915; Wulson v. Sawyer, 177 Ark. 492, 6 S. W. (2d) 825, and Surace v. Danna, 248 N. Y. 18, 24, 25, 161 N. E. 315. Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings. The statute speaks of 'compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds, or in shares of stock, must pay their tribute to the state. If immunity is to be theirs, the statute conceding it must speak in clearer terms than the one before us here. The judgment of the Supreme Court of Tennessee disallowing the exemption has support in other courts. State v. Wright, 224 Ala. 357, 140 So. 584; Martin v. Guilford County, 201 N. C. 63, 158 S. E. 847, 76 A. L. R. [fol. 16] 978. There are decisions to the contrary but we are unable to approve them. Rucker v. Merck, 172 Ga. 793, 159 S. E. 501; Atlanta v. Stokes, 175 Ga. 201, 165 S. E. 270; Payne v. Jordan, 36 Ga. App. 787, 138 S. E. 262. Our ruling in Spicer v. Smith, 288 U. S. 430, 77 L. Ed. 875, 53 S. Ct. 415, 84 A. L. R. 1525, leaves no room for the contention that the exemption is enlarged by reason of payment to the guardian instead of payment to the ward. The judgment is affirmed."

It will be noted in the Trotter case, supra, a similar decision of this Court was upheld. Martin v. Guilford Co., 201 N. C. 63, 76 A. L. R. 978.

In State Hospital v. Bank, 207 N. C. 697 (708) it was held:

"Under the statute as construed by the Supreme Court of the United States and by this Court, the contention of

the defendant cannot be sustained. The estate of Earl N. Betts, consisting of securities now held by his guardian, is subject to the claim of the plaintiff in this action, notwithstanding the fact that such securities were purchased by his guardians with moneys paid to them by the United States Government as compensation awarded under the Act of Congress to the said Earl N. Betts as a veteran of the Army of the United States."

The Trotter, Martin, and Hospital cases, supra, undoubtedly sustain the liability of the veteran.

In Lawrence v. Shaw, 300 U. S. 245, 81 L. ed. 623 (1936), decided under the 1935 Act, upon an appeal from the Supreme Court of North Carolina, Mr. Chief Justice Hughes, writing for the Court, says; at page 626, L. Ed.:

"The World War Veterans' Act, 1924, provided that the compensation and insurance allowances should be 'exempt from all taxation'. The Act of 1935 is more specific, providing that the payments shall be exempt from taxation and shall not be liable to process 'either before or after receipt by the beneficiary'. There was added the qualification that the exemption should not extend 'to any property purchased in part or wholly out of such payments.' This more detailed provision was substituted for that of the earlier Act and [fol. 17] was expressly made applicable to payments theretofore made. We think it clear that the provision of the later Act was intended to clarify the former rather than to change its import and it was with that purpose that it was made retroactive."

In the Lawrence case, supra, the Court says, at page 626, L. ed. (Vol. 81):

"In Trotter v. Tennessee, 290 U. S. 354, 78 L. ed. 358, 54 Supreme Court, 138, supra, we considered the provisions of paragraph 22 of the World War veterans' Act, 1924, in relation to investments by the guardian of an incompetent veteran of the moneys received from the Government for compensation and insurance. We held that land purchased by the guardian with such moneys was not exempt. We said: 'The statute speaks of 'compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments

of the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the State'."

The Court continues, on page 627, L. Ed.:

"The provision of the Act of 1935 that the exemption should not apply to property purchased out of moneys received from the Government shows the intent to deny exemption to investments, as was ruled in the Trotter Case. It is of course true that deposits in bank may be made under special agreement by which the deposits assume the character of investments and would lose immunity accordingly. No such agreement is shown here. Nor are the bank balances shown to be the proceeds of investments. They are stipulated to be 'uninvested balances' of the government payments. * * * We hold that the immunity from taxation does attach to bank credits of the veteran or his guardian which do not represent or flow from his investments but result from the deposit of the warrants or checks received from the Government when such deposits are made in the ordinary manner so that the proceeds of the collection are subject to draft upon demand for the veteran's use. In [fol. 18] order to carry out the intent of the statute, the avails of the government warrants or checks must be deemed exempt until they are expended or invested. The answer by the state court is broad enough to cover bank deposits of that sort and we consider the ruling in that application to be contrary to the federal statute."

We think that it is clear from the holding of the Supreme Court of the United States, in Lawrence v. Shaw, supra, that the Court intends to lay down the rule that investments of a World War veteran are subject to taxation, and to the claims of the veteran's creditors. This being so, the investments of the defendant in this case are clearly subject to the execution issued upon plaintiff's judgment. A case directly in point is McCurry v. Peek, 54 Ga. App. 341, 187 S. E. 854 (1936).

To stretch the United States Statute of 1935 to cover the facts in this case, as found by the Court below, would lead us into chaos. When the investments are bona-fide made and a novation takes place, taxes attach and creditors have a right to collect their just debts. We hardly think that the noble, heroic veterans would have it otherwise.

For the reasons given, the judgment of the Court below is Affirmed.

A true copy.

Edward Murray, Clerk of the Supreme Court of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

[fol. 19] [File endorsement omitted.]

[fol. 20] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

DOCKET ENTRIES

Appeal docketed 5 September, 1938.
Case argued 21 September, 1938.
Opinion filed 28 September, 1938.
Final Judgment entered 28 September, 1938.

IN SUPREME COURT OF NORTH CAROLINA

CLERK'S CERTIFICATE

I, Edward Murray, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true and perfect copy of the record and proceedings in the above entitled case, as the same now appear from the originals on file in my office.

I further certify that no petition to rehear has been filed, and that the time for filing such petition under the rules of this Court has expired.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Raleigh, North Carolina, this 7 December, 1938.

Edward Murray, Clerk of the Supreme Court of the State of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

[fol. 21] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 30, 1939

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(10051)

FILE COPY

Office - Supreme Court, U. S.
FILED
DEC 23 1938
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 541

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier, Incompetent Veteran,
Petitioners,

vs.

CURLEY BRYANT, *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT OF PETITION

JOHN W. WOOD,
Attorney for Petitioners.

Printed by Law Reporter Ptg. Co., 518 5th St., Washington, D. C.

INDEX

Subject Index

	PAGE
Petition for Writ of Certiorari	1
Action in the State Courts	2
Summary and Brief Statement of the Matter Involved	3
Question Presented	3
Facts from Which the Controversy Arises	4
Statutes Relied upon by Petitioners	4
Jurisdiction	5
Assignments of Error	5
Reasons for Allowance of the Writ	5
Brief in Support of Petition	7
Opinion of the Court Below	7
Jurisdiction	7
Statement	8
Assignments of Error	8
Argument	9
Epitome	9
Point I	9
Point II	20
Point III	23
Summary	28
Conclusion	29
Appendix	30

Table of Cases Cited

	PAGE
Bank v. Carpenter, 119 N. Y. S. 550, 23 N. E. 1108	24
Brewster v. Gage, 280 U. S. 327, 74 L. Ed. 457, 50 S. Ct. 115	22
Culp v. Webster, 70 Pac. (2d) 273	21
De Baum v. Hulett Undertaking Co., 169 Miss. 488, 153 So. 513	24, 25
Estate of Ferarazza, 28 Pac. (2d) 670	24
Goodwin v. Claytor, 137 N. C. 224, 49 S. E. 173	24
Hills v. Joseph, 229 Fed. 865	23
Hines v. Lowrey, 83 L. Ed. 62	27
Lawrence v. Shaw, 300 U. S. 245, 81 L. Ed. 623, 57 S. Ct. 443, 210 N. C. 352, 186 S. E. 504	3, 7, 18, 19, 22, 25, 28
McIntosh v. Aubrey, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561	10
Martin v. County, 201 N. C. 63, 158 S. E. 847	18
Murphy, In re, 237 N. Y. S. 448	11
Pagel v. Pagel, 291 U. S. 473, 78 L. Ed. 921, 54 S. Ct. 497	12, 22
Payne v. Jordan, 36 Ga. App. 787, 138 S. E. 262, 152 Ga. 367, 110 S. E. 4 and 452	11
Rucker v. Merck, 172 Ga. 793, 159 S. E. 501	11
Spicer v. Smith, 288 U. S. 430, 77 L. Ed. 875, 53 S. Ct. 415	22
State, etc., v. Bank, 207 N. C. 697, 178 S. E. 487 (Certiorari denied 295 U. S. 761, 79 L. Ed. 1704, 55 S. Ct. 921)	13
State v. Shawnee County Commissioners, 132 Kan. 233, 294 Pac. 915 (Certiorari denied, 283 U. S. 855, 75 L. Ed. 1462, 51 S. Ct. 15)	11, 18, 24
Surace v. Danna, 248 N. Y. 18, 161 N. E. 315	24
Trotter v. Tennessee, 290 U. S. 354, 78 L. Ed. 358, 54 S. Ct. 138	11, 12, 13, 18
United States v. Hall, 98 U. S. 343, 25 L. Ed. 180	25, 26
Wilson v. Sawyer, 177 Ark. 492, 6 S.W. (2d) 825	11

Statutes Cited

PAGE

Act of October 6, 1917, Section 402, (40 Stat. 398) 11

Act of August 12, 1935, (Public No. 262, 74th Congress, 49 Stat. 607)
1, 2, 3, 4, 5, 8, 9, 13, 16, 17, 18, 19, 20, 22, 23, 26, 28

Constitution of the United States, Article I, Section 8 25

Public No. 262, 74th Congress, Section 5, (49 Stat. 607) 2, 3, 4, 5, 13

Public Statutes of North Carolina, Chapter 33, Session 1929 (Michie's Code of North Carolina, Chapter 40-a, Section 2202 (13)—Investment of Funds) 26, 34

Title 28, U. S. C., Section 344, Paragraph (b), (Section 237, Judicial Code, as Amended, 43 Stat. 937) 3, 5, 7

Title 38, U. S. C., Section 54, (Revised Statutes 4747, Act of March 3, 1873) 4, 9, 10, 11, 13, 14, 16, 17

Title 38, U. S. C., Section 450, (Public No. 262, 74th Congress, Section 1, 49 Stat. 607) 13, 26, 28

Title 38, U. S. C., Section 454, (World War Veterans' Act, 1924, Section 22, 43 Stat. 613)
2, 3, 4, 7, 9, 10, 11, 13, 14, 16, 17, 18

Title 38, U. S. C., Section 454(a), (Public No. 262, 74th Congress, Section 3, 49 Stat. 607)
1, 2, 3, 4, 5, 7, 8, 9, 13, 16, 17, 18, 19, 20, 22, 23, 28

Title 38, U. S. C., Section 618, (43 Stat. 125) 24

War Risk Insurance Act, Section 28, as Amended by Act of June 25, 1918, (40 Stat. 609) 11

Other Citations

Hearings of Subcommittee of Committee on World War Veterans' Legislation, H. R. 409, 73rd Congress,
14, 15, 16, 30, 31, 32, 33

Recommended Legislation of Administrator of Veterans' Affairs to Subcommittee of Committee on World War Veterans' Legislation, H. R. 409, 73rd Congress 14

Recommended Legislation of Subcommittee of Committee on World War Veterans' Legislation, H. R. 409, 73rd Congress 16

Regulations 5339 and 5340 of United States Veterans' Administration 22, 23
Report of Subcommittee of Committee on World War Veterans' Legislation, H. R. 409, 73rd Congress 13, 14, 16
Report of Finance Committee of Senate, No. 1072 S, 74th Congress 16, 17
25 C. J. 10 ..... 23, 24
25 C. J. 93 24
46 C. J. 573 et seq. 27

Statutes Relied On

Title 38, U. S. C., Section 454(a), (Public No. 262, 74th Congress, Section 3, Act of August 12, 1935, 49 Stat. 607) 1, 2, 3, 4, 5, 7, 8, 9, 13, 16, 17, 18, 19, 20, 22, 23, 28
Public No. 262, 74th Congress, Section 5 (49 Stat. 607) 2, 3, 4, 5, 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. _____

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier, Incompetent Veteran,
Petitioners,

vs.

CURLEY BRYANT, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners John Carrier, an incompetent veteran, and his guardian, J. Harvey Carpenter, pray that a writ of certiorari issue to review the judgment of the Supreme Court of North Carolina, in the cause entitled Bryant vs. Carrier, et al, 198 S. E. 651, which became final on September 28, 1938, on the question whether said judgment contravenes the exemptive provisions of Section 454a, Title 38, U. S. C., (Sec. 3, Public No. 262, 74th Congress) thereby denying said incompetent veteran a right granted by said Federal statute, viz., the right to the benefits of the pro-

ceeds of his insurance and compensation, paid by the United States Government, as invested by his guardian, free from the claims of a judgment creditor.

In support thereof petitioner J. Harvey Carpenter respectfully represents to this Honorable Court that he is, and at all times pertinent to this action has been, the duly appointed and qualified guardian of said John Carrier, an incompetent veteran of the World War, acting under due authority from the Superior Court of Rutherford County, North Carolina, and governed by the rights and duties arising under the laws of said State, and the applicable Federal statutes, in particular Section 454a, Title 38, U. S. C., Section 3, Public No. 262, 74th Congress, and also Section 5 of said Act not printed in the United States Code, except as Note 2 to said Section 454a.

ACTION IN THE STATE COURTS:

As a result of an action filed in the Superior Court, County and State aforesaid, by respondent against said incompetent veteran a judgment was rendered against said veteran in the amount of $1,000 actual, and $500 punitive damages, which judgment was affirmed by the Supreme Court of the State, Bryant vs. Carrier, et al, 198 S. E. 619. Pending determination of that appeal, petitioner, having for apparent reasons filed no supersedeas bond, secured a temporary restraining order enjoining plaintiff from proceeding by way of execution on the judgment on the ground that all of said veteran's estate, consisting of United States Bonds to the principal value of $8,397 and promissory notes of the face value of $3,997 being investments made of moneys paid for the benefit of said veteran by the United States as compensation and disability insurance (War Risk Term Insurance), is exempt from execution on a creditor's claim by virtue of the provisions of Section 454 and 454a, Title 38, U. S. C., (R. 1, 2). Said temporary restraining order was dissolved by the said Superior Court, on the ground that

such moneys having been invested, had lost their character as exempt property and that such investments were subject to execution (R. 5-7). Upon appeal the Supreme Court of the State affirmed (R. 8) its decision, 198 S. E. 651, being rendered September 28, 1938; and judgment became final on September 28, 1938 (R. 16).

This petition for a writ of certiorari is filed within three months of the time when said judgment became final, and there is presented herewith a certified copy of the entire record and proceedings in connection with the restraining order, including those in the Supreme Court of North Carolina.

This petition for a writ of certiorari is filed under the provisions of Title 28, U. S. C., Section 344, paragraph (b), Section 237 Judicial Code as amended.

SUMMARY AND BRIEF STATEMENT OF THE MATTERS INVOLVED

Question Presented

The sole question presented herein is whether Section 454, Title 38, U. S. C., as amended, Section 454a, Title 38, U. S. C., and Section 5, Public No. 262, 74th Congress, prevent satisfaction of the judgment by way of execution on the assets of the veteran derived from payments under the World War Veterans' Act and cognate veteran legislation. The Supreme Court of North Carolina conceded the power of Congress to exempt, but held that such exemption extends only to the money as such, and not to the investments made therefrom, citing Lawrence vs. Shaw, 300 U. S. 245, 81 L. Ed. 623, 57 S. Ct. 443, in support thereof. Your petitioners urge that the Court erred in applying the rule as to exemption from taxation to exemption to claims of a creditor and to non-liability to "attachment, levy, or seizure by or under any legal or equitable process whatever * * *."

Facts from Which the Controversy Arises

The controversy involves solely the refusal of the Superior Court to grant a permanent injunction restraining the judgment creditor levying execution on the assets of the veteran, and the affirmance of such decision by the Supreme Court of North Carolina.

Statutes Relied Upon by Petitioners

Section 454(a), Title 38, U. S. C., Section 3, Public No. 262, 74th Congress, which repealed Section 454 (Sec. 22, World War Veterans' Act) and Section 54, Title 38, U. S. C. (R. S. 4747); and Section 5, Public No. 262, are quoted in full:

Section 454(a), Section 3, Public No. 262, 74th Congress.

"Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws *nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments.* Section 4747 of the Revised Statutes and Section 22 of the World War Veterans' Act, 1924, are hereby repealed, and all other Acts inconsistent herewith are hereby modified accordingly. The provisions of this section shall not be construed to prohibit the assignment by any person, to whom converted insurance shall be payable under Title III of the World War Veterans' Act, 1924, of his interest in such insurance to any other member of the permitted class of beneficiaries." (Emphasis supplied)

Section 5, Public No. 262, 74th Congress.

"That this Act shall take effect and be in force from and after its passage, but the provisions hereof shall apply to payments made heretofore under any of the Acts mentioned herein."

JURISDICTION

This Court has jurisdiction, as provided in Title 28, U. S. C., Section 344, paragraph (b), Section 237, Judicial Code as amended, to review, by certiorari, the action of the Court below which erroneously construed the Federal statute and thereby deprived the incompetent veteran of a property right, privilege or immunity arising under said Federal statute and which was appropriately claimed on his behalf.

ASSIGNMENTS OF ERROR

The Supreme Court of North Carolina erred (1) in affirming the judgment of the court below dissolving the injunction and refusing to make same permanent, (2) in holding that the assets of the veteran are subject to execution, and (3) in holding that moneys paid a veteran by way of disability compensation and insurance when invested are not subject to the exemptive provisions of Section 454(a) respecting claims of creditors and attachment.

REASONS FOR ALLOWANCE OF THE WRIT

In view whereof Petitioners respectfully urge that the writ should issue because:

1. In so affirming said judgment the Court erroneously decided a question arising under a Federal statute adversely to Petitioners' contentions, and, it is believed, contrary to the purpose and intent of Congress, and the decisions of this Court;

2. The matter at issue is of much importance, since the determination of the issue arising enters into and affects a proper administration from year to year of the trust committed to the guardian petitioner, and likewise affects numerous other trusts of a similar character, involving the same issue. A determination of the issue is essential in order that the guardian petitioner, and those similarly affected, may discharge the duties of such trusts according to the laws of their respective States and according to the Acts of Congress.

3. The decision and opinion of the Supreme Court of North Carolina deprives the incompetent veteran of a right, privilege, or immunity, i. e., an exemption, granted by Federal law.

Attached hereto is the Brief of Petitioners in support of this petition for said Writ of Certiorari, to which reference is respectfully made for discussion of the law involved and of the authorities in support of the right claimed on behalf of the incompetent veteran.

WHEREFORE, your Petitioners respectfully request that this Court issue a Writ of Certiorari to the Supreme Court of the State of North Carolina to certify and send to this Court a full and complete transcript of the record herein, to the end that the cause may be reviewed and determined by this Court as provided by law, that the judgment may be reversed with costs, and for such other and further relief as may be appropriate and granted in the premises.

JOHN W. WOOD,
Attorney for Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. .....

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINION OF THE COURT BELOW

The opinion of the Supreme Court of North Carolina filed September 28, 1938, appears on pages 9-16 of the record, and is reported in the Advance Sheets of S. E. Reporter, Volume 198, page 651. This decision affirmed the judgment of the Superior Court dissolving the injunction against satisfaction of the judgment debt by way of execution on assets of the incompetent veteran derived from disability compensation and insurance payments made for his benefit by the United States Government, and held that such assets are not exempt under Section 454, Title 38, U. S. C., as amended; and the judgment in said Court became final on September 28, 1938.

This Court has jurisdiction. The power and authority of the United States Supreme Court to review the final judgment of the North Carolina Supreme Court in the instant case is clear. Title 28, U. S. C., Section 344, paragraph (b), Section 237 Judicial Code, as amended.

Lawrence vs. Shaw, 300 U. S. 245, 81 L. Ed. 623, 57 S. Ct. 443.

In that case this Court reviewed, and reversed, a decision of the Supreme Court of North Carolina on a question of exemption from taxation arising under the statute involved in the instant case, Section 454(a), Title 38, U. S. C. Likewise, as in that case, the rights of the Petitioners originate in the law of the United States and the construction of such law is necessary to resolve the controversy. Ibid. The question at issue should be settled by this Court, for the reason that it involves not alone the rights of the incompetent veteran in this case, and the applicability of the provisions of the statute to some forty thousand other veterans under guardianship, but also the applicability of the terms of the statute to the hundreds of thousands of veterans and beneficiaries receiving disability or death payments of compensation, insurance, or pension from the United States Government.

STATEMENT

A statement of the material and essential facts is set out in the petition (pages 2 and 3 hereof) and is not repeated here but reference thereto is respectfully made.

ASSIGNMENTS OF ERROR

It is respectfully submitted that the Supreme Court of North Carolina erred in holding that:

1. The judgment of the Superior Court dissolving the injunction and refusing to make same permanent should be affirmed.

2. In holding that the assets of the veteran are subject to execution.

3. In holding that moneys paid a veteran, by way of disability compensation and insurance benefits, when invested are not subject to the exemptive provisions of Section 454(a) respecting claims of creditors and attachment.

ARGUMENT

Epitome

Upon each of the above assignments of error the following argument is respectfully submitted:

I. The judicial and legislative history of Section 454(a) clearly shows that it was the manifest intent and purpose of Congress that the exemptive provisions thereof relating to claims of creditors and attachment comprehended not only the benefits paid but also the proceeds of such benefits invested in usual form.

II. Under the well-settled principles of statutory construction the logical construction of Section 454(a) is that it exempts not only the benefits paid but also the proceeds thereof invested in the usual form from the claims of creditors and attachment.

III. The statute, being within the constitutional power of the Congress, is controlling, and should be liberally construed to accomplish the intent and purpose thereof.

POINT I.

The Judicial and Legislative History of Section 454(a) Clearly Shows That It Was the Manifest Intent and Purpose of Congress That the Exemptive Provisions Thereof Relating to Claims of Creditors and Attachment Comprehended Not Only the Benefits Paid But Also the Proceeds of Such Benefits Invested in Usual Form.

Section 454(a), (Section 3, Public No. 262, 74th Congress, entitled "An Act to safeguard the estates of veterans derived from payments of pension, compensation * * * and insurance, and for other purposes") repealed R. S. 4747 (Section 54, Title 38, U. S. C.), and Section 454 (Section 22, World War Veterans' Act, 1924) and modified all other Acts inconsistent with its provisions.

R. S. 4747 read as follows:

"54. Attachment, levy, or seizure of moneys due pensioners prohibited. No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner."

Section 22 read:

"454. Assignability and exempt status of compensation, insurance, and maintenance and support allowances. The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation. Such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable.

"The provisions of this section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Part III of this chapter of his interest in such insurance to any other member of the permitted class of beneficiaries."

The former statute, R. S. 4747, Act of March 3, 1873, was construed by this Court, in McIntosh vs. Aubrey, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561, to the effect that the words "Money due or to become due" applied to pension moneys in the pension office or the hands of its agents, and that the exemption from execution did not extend to property purchased out of pension funds.

Section 454, quoted above, (Section 22, World War Veterans' Act), was originally Section 28 of the War Risk Insurance Act as amended by the Act of June 25, 1918. (Section 402 of the Act of October 6, 1917, containing similar language referred only to insurance payments.) The language of this section differed from that of R. S. 4747 in that it did not use the words "due or to become due", but instead "the * * * compensation and insurance payable * * * shall not be subject to the claims of creditors of any person to whom an award is made * * * ".

The Supreme Courts of several States construed this language broadly to apply not only to the funds after their receipt by the beneficiary but to property purchased in part or wholly out of such funds—following Payne vs. Jordan, 36 Ga. App. 787, 138 S. E. 262. See case same title 152 Ga. 367, 110 S. E. 4 and 452. Wilson vs. Sawyer, 177 Ark. 492, 6 S. W. (2d) 825. In re Murphy, 237 N. Y. S. 448.

The departure from this liberal construction arose over the question of exemption from taxation. While the Supreme Court of Georgia in the case of Rucker vs. Merck, 172 Ga. 793, 159 S. E. 501, held the exemption of Section 22 extended also to taxation of property purchased with benefits received, other State Supreme Courts declined to follow. The Supreme Court of Kansas held, in State vs. Shawnee County Commissioners, 132 Kan. 233, 294 Pac. 915, that the word "payable" as used in Section 22 meant the same as "Due or to become due" used in R. S. 4747, and hence that the exemption as to taxation did not extend to property purchased out of the benefits received. This Court denied certiorari in that case, 283 U. S. 855, 75 L. Ed. 1462, 51 S. Ct. 15; but the same question was considered in the case of Trotter vs. Tennessee, 290 U. S. 354, 78 L. Ed. 358, 54 S. Ct. 138. In that case the Supplemental Brief of the Petitioner showed that the legislative history of Section 22 clearly demonstrated that the word "payable" as used therein was synonymous with "paid". This Court did not base its decision on the construction of said word as did

the Supreme Court of Kansas in the case of State vs. Shawnee County Commissioners, supra, but instead held that

> "Exemptions from taxation are not to be enlarged by implication if doubts are nicely balanced. Chicago Theological Seminary vs. Illinois, 188 U. S. 662, 674, 47 L. Ed. 641, 649, 23 S. Ct. 386. On the other hand, they are not to be read so grudgingly as to thwart the purpose of the lawmakers. The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. McIntosh vs. Aubrey, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561. We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. Cf. McIntosh vs. Aubrey, supra; State ex rel. Smith vs. Shawnee County, 132 Kan. 233, 294 Pac. 915; Wilson vs. Sawyer, 177 Ark. 492, 6 S. W. (2d) 825; and Surace vs. Danna, 248 N. Y. 18, 24, 25, 161 N. E. 315. Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings. The statute speaks of 'Compensation, insurance and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the state. If immunity is to be theirs, the statute conceding it must speak in clearer terms than the one before us here."

It will be observed the question was then left open whether the exemption extended to moneys derived from such payments.

This Court had occasion to consider the other phase of the exemption statute—that as to claims of creditors—in Pagel vs. Pagel, 291 U. S. 473, 78 L. Ed. 921, 54 S. Ct. 497, on a claim that such exemption, as to creditors of the deceased veteran, extended to insurance paid his estate (not

the veteran himself) and held, "The purpose of the exemption, Sec. 454, is to safeguard to the insured soldier and the beneficiary payments made under the policy to them or for their benefit. * * * The language of the Statute limits the exemption to "any person to whom an award is made". It is clear that the statute does not extend the exemption beyond the insured and beneficiary.

Thereafter, and on January 28, 1935, the Supreme Court of North Carolina, in State, etc., vs. Bank, 207 N. C. 697, 178 S. E. 487, applied the rule as to taxation announced by this Court in the case of Trotter vs. Tennessee, supra, to the claims of the State as creditor—holding specifically that the property purchased out of the benefits received and invested was not exempt. This Court denied certiorari, 295 U. S. 761; 79 L. Ed. 1704, 55 S. Ct. 921.

It was to cure this uncertainty that Section 3 of the Act of August 12, 1935—Public No. 262, 74th Congress—was proposed. Said act was entitled: "To safeguard the estates of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance, and for other purposes." Section 1 thereof amended Section 450, Title 38, U. S. C., as to guardianship matters. Section 2 repealed the embezzlement statutes and enacted a more stringent section as to embezzlement by guardians and other fiduciaries. Section 3 repealed R. S. 4747 and Section 454, Title 38, U. S. C., and re-enacted in language intended to be clearer certain provisions thereof, and it is this section which is involved in the instant case. Section 4 contained a separability clause. Section 5 provided that the provisions of the Act should be prospectively effective as to payments made prior to its enactment.

This Act, Public No. 262, 74th Congress, Title 38, Section 454(a), U. S. C., was enacted as the result of an investigation made by a sub-committee of the Committee on World War Veterans' Legislation of the House of Representatives under H. R. 409, 73rd Congress, and as shown on page 71 of the Report of said sub-committee, submitted January 8,

1935, the Administrator of Veterans' Affairs recommended to it, page 74, that the section of the statute which is involved in the instant case be amended to read as follows:

> "Section to replace Section 22, World War Veterans' Act, Section 454, Title 38, U. S. C., and Section 4747, Revised Statutes
>
> "Section —. Payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the fiduciary, so long as they remain unexpended for his benefit. *Such provisions shall not attach to any property purchased in part or wholly out of such payments,* nor to claims of the United States arising under such laws. Sections 4747 Revised Statutes, 308 World War Adjusted Compensation Act, and 22 World War Veterans' Act are repealed, and all other acts inconsistent herewith are modified hereby." (Emphasis supplied.)

It will be noted that under the language of this proposed legislation as submitted by the Administrator of Veterans' Affairs, property or investments would not have been exempt from either taxes or the claims of creditors.

Hearings were held by the above mentioned sub-committee and portions of a statement made by Mr. Edward E. Odom, Assistant Solicitor of the United States Veterans' Administration, at the hearing held on December 13, 1934, as shown on page 262, Part 3, Hearings, H. R. 409, 73rd Congress, are quoted below and a more complete statement of the hearing held on said date appears on pages 30 to 33 of the Appendix hereof.

> "Mr. Odom. The suggestion that the Administrator made, I believe, read this way:

'This provision shall not attach to any property purchased wholly or in part out of such payments, nor to claims of the United States arising under such laws.'

"The first clause of that suggested sentence was intended to bring this section into line with the decision of the Supreme Court of the United States in the case of Trotter vs. Tennessee; and, as applied to taxation, probably is correct if the intention of the Congress is that property purchased out of the insurance and compensation payments should not be exempt from taxation. The Supreme Court has held that under the present law it is not exempt; but there is a serious question whether—for example, if a veteran, as I think was suggested by Justice Cardozo, takes his compensation and buys a barrel of flour with it or a side of meat, that that should not be exempt, the same as the money itself; or, if he invests it in bonds, that the bonds should or should not, as might be decided by the Congress, be exempt from the claims of his creditors.

"It was our understanding that this would not affect the present holding that these funds, no matter in what form they are invested, would be exempt from the claims of creditors. But there is a case pending in the Supreme Court of the State of North Carolina, and another one in the Kentucky Supreme Court, where the decision of the Supreme Court of the United States in the case of Trotter vs. Tennessee is being argued as applicable to the claims of creditors; that is, that if the veteran puts his money in property, that it is no longer exempt from the claim of the creditor.

"If that is the proper effect of this language, it occurs to us that the committee might desire to give some consideration to whether they would not change that so as to make it clear that it is only on the question of taxation that the property shall not be exempt.

"In other words, it could be argued, I suppose well, that the veteran's property should be taxed the same as anybody else's. *Now, whether his property should also*

be free from the claims of creditors when that property is purchased with these funds, is the question that ought to be considered by the committee at this time, I think." (Emphasis supplied.)

At the conclusion of all of the Hearings which were held by the above mentioned sub-committee, it recommended, page 79 of its Report submitted January 8, 1935, as follows:

"It is therefore proposed that the following section be enacted to replace Section 22, World War Veterans' Act, Section 454, Title 38, United States Code, and Section 4747, Revised Statutes:

"Sec. 3. Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws *nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments.* Sections 4747, Revised Statutes, and 22, World War Veterans' Act, are repealed, and all other Acts inconsistent herewith are modified accordingly. (Emphasis supplied.)

"The provisions of this section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Title III of the World War Veterans' Act of his interest in such insurance to any other member of the permitted class of beneficiaries."

This legislation as recommended by the said sub-committee was subsequently enacted without material change and the Committee of Finance of the Senate in its report (No. 1072, S. 74th Congress) explained the changes intended by Section 3, in part as follows:

"(11) The next change is Section 3 of the bill which proposed a new section to replace Section 22 of the World War Veterans' Act, 1924, and Section 4747 of the Revised Statutes. The purpose of this new section is two-fold: first, to make uniform the law with respect to exemptions granted beneficiaries, and second to clarify the language with respect to such exemptions. * * *

"The two sections have also been construed differently not only by the highest appellate courts of the States, but also by the Supreme Court of the United States. For example, it has been held that 'payments due or to become due' of Section 4747 Revised Statutes refer to the payments before they are made, and that the exemptions of said section do not extend to payments made to a beneficiary or to the guardian of a beneficiary. (See McIntosh vs. Aubrey (185 U. S. 122, 46 L. Ed. 834).) Some State supreme courts have held that the language of Section 22 should be construed similarly. (See State ex rel. Smith vs. Bd. of Com. of Shawnee Co. (132 Kan. 233, 294 Pac. 915)), and although the Supreme Court of the United States denied certiorari in the case just cited it has not passed directly upon that specific question, but has indicated that it would not follow this doctrine with respect to any exemption other than that relating to taxation. (See Trotter vs. Tenn. (78 L. Ed. 128) and Pagel vs. Pagel (78 L. Ed. 627).) The language of the proposed amendatory section will, it is believed, clarify these disputed points and will place the law in conformity with the decisions of the Supreme Court on the subject. It will make the law uniform as to all beneficiaries."

It is apparent from an examination of the proposed legislation as submitted by the Administrator of Veterans' Affairs, the Hearings and Reports of the Committees of Congress, and the statute as finally recommended by these committees and enacted by Congress, that the change which was effected in the language of the proposed legislation concerning "any property purchased in part or wholly out of such payments" was considerately and purposefully

made. It is also apparent that it was the intent and purpose of Congress in enacting this statute to distinguish between the right of a sovereign, on the one hand, and the claim of a creditor, on the other, and to reject the recommendation of the Administrator of Veterans' Affairs which would have subjected such property to the claims of creditors as well as for taxes, and instead to safeguard the estates of veterans derived from benefit payments, even though invested, from all claims other than those of a sovereign.

The right of a sovereign to levy and collect taxes for the public good has always been regarded as superior to that of a creditor to collect his claim and Congress, in refusing to enact the portion of the proposed legislation which removed the exemptive provisions as "to any property purchased in part or wholly out of such payments" as far as creditors were concerned, recognized the higher obligation which it and other legislative bodies place upon a citizen to pay his tribute to a sovereign than upon him to pay his debt to a creditor and enacted such a statute as it believed was sufficient to exempt such property from the claim of a creditor and yet leave the sovereign free to collect its just due.

The Supreme Court of North Carolina had held, in Martin vs. County, 201 N. C. 63, 158 S. E. 847, decided prior to the case of Trotter vs. Tennessee, supra, and the passage of the statute involved in this case, that property purchased out of benefit payments was not exempt from taxation because the word "payable" as used in Section 22—following the theory of the Supreme Court of Kansas in the case of State vs. Shawnee County Commissioners, supra—protected the payments only before they were paid; subsequent to the enactment of Section 3, supra, it held, in Lawrence vs. Shaw, 210 N. C. 352, 186 S. E. 504, that the payments when deposited in a bank by the veteran's guardian are not exempt from taxation. This Court reversed the latter case, Lawrence vs. Shaw, 300 U. S. 245, 81 L. Ed. 623, 57 S. Ct. 443, and said:

"Having no doubt that the moneys payable by the Government to the veteran were exempt until they came into his hands or those of his guardian, we left the question open 'Whether the exemption remained in force while they continued in those hands or on deposit in a bank.' The World War Veterans' Act, 1924, provided that the compensation and insurance allowances should be 'exempt from all taxation.' The Act of 1935 is more specific, providing that the payments shall be exempt from taxation and shall not be liable to process 'either before or after receipt by the beneficiary.' There was added the qualification that the exemption should not extend 'to any property purchased in part or wholly out of such payments.' This more detailed provision was substituted for that of the earlier Act and was expressly made applicable to payments theretofore made. We think it clear that the provision of the later Act was intended to clarify the former rather than to change its import and it was with that purpose that it was made retroactive."

It is believed, and therefore asserted, that this Court recognized in its decision in Lawrence vs. Shaw, supra, that the history of Section 454(a), Title 38, U. S. C., clearly indicated that the intent of said statute is that the exemption as to taxation should cease when the payments are invested but that exemption as to claims of creditors should continue and that the Supreme Court of North Carolina by failing to distinguish in its decision in the instant case between the right of a sovereign and the claim of a creditor, misinterpreted the decision of this Court in the case of Lawrence vs. Shaw, supra, and erroneously construed the provisions of the statute.

POINT II.

Under the Well Settled Principles of Statutory Construction the Logical Construction of Section 454(a) Is That It Exempts Not Only the Benefits Paid But Also the Proceeds Thereof Invested in the Usual Form from the Claims of Creditors and Attachment.

The cardinal rules of statutory construction, uniformly recognized, aid in arriving at the proper meaning of the statute. Among these are that the legislative intent must prevail, that the statute is to be read as a whole, that every part is to be given effect, that particular words out of harmony with the general purposes of the act may be given effect if by way of proviso or execution, and that the express mention of one thing implies the exclusion of another of the same class.

The application of these rules to Section 454(a), Title 38, U. S. C. (Section 3, Public No. 262, 74th Congress), shows that the proper construction of the section is in accord with its judicial and legislative history as above outlined. It has been pointed out that the Act of which this section is a part is entitled "An Act to safeguard the estates of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance, and for other purposes." The language of the section is specific: First it provides that benefits may not be assigned before payment, second that payments, either before or after receipt by the beneficiary, shall be exempt from taxation, claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever. Then follows two exceptions, first certain claims of the United States, and second that the exemption *as to taxation* shall not extend *to property purchased* in whole or in part *out of such payments.*

Such specific language removes all doubt as to the meaning of the word "payable," and makes it clear that the exemptions apply *after* as well as *before* receipt by the ben-

eficiary. "Beneficiary" is one, veteran or otherwise, in receipt of benefits.. Culp vs. Webster, 70 Pac. (2d) 273. This is in line with this Court's decision in the case of Pagel vs. Pagel, supra.

Effectuating a liberal purpose, as declared in the enacting clause, the exemption provisions of the statute remain unrestricted by legislative fiat except in the matter of claims of the United States and taxation. The decision of the Supreme Court of North Carolina can be sustained, if at all, therefore, only by resort to an *implied*; certainly not an express, restriction of the exemption, a view which favors creditors whose interests did not constitute the subject matter of the legislation, a view, too, which burdens the statute with an implication against its declared purpose and denies relief to the only class for whose benefit the law was enacted. An implication of this kind might be resorted to, in a proper case, to effectute a declared purpose, or, as Petitioners may do here, to sustain an exemption, but it may never be utilized, as it has been here, to frustrate the will of the Congress. Even so, if anything is to be implied, which Petitioners submit may be improper and is unnecessary in this case, all that may be garnered from the accepted rules of statutory construction sustains Petitioners' contention and has little or no tendency to support the decision of the Court below.

Since the statute contained ample exemption provisions there was no need for Congress to further lengthen it by providing specifically that investments made of the "Payments of benefits" should be exempt from the claims of creditors, and applying the universally accepted maxim "*Expressio unius est exclusio alterius*" as a means of discovering the legislative intent the only logical conclusion which can be reached is that since Congress specifically excepted the exemptive provisions as to taxation it thereby intended that investments made of the benefits should be exempt as to all claims except those for taxes.

Further, as pointed out by this Court, in Lawrence vs. Shaw, supra, the intent was to clarify the language to accord with court decisions. Before the approval of the Act here involved, the weight of authority was to the effect that the exemption from taxation did not extend to investments. This Court so held. As to exemption from the claims of creditors, however, the weight of authority was that the exemption applied and protected investments and property acquired with benefit payments. This Court never decided that question. The two exemptions stood, and stand, on a different basis. The one subject to strict construction—as every citizen is expected to pay his just part of Government expense; the other to be broadly construed for the protection intended. Pagel vs. Pagel, supra, Spicer vs. Smith, 288 U. S. 430, 77 L. Ed. 875, 53 S. Ct. 415.

It is also a fundamental principle of statutory construction that weight is to be given to the contemporaneous construction placed upon a statute by the officers of departments charged with the duty of executing it, especially where such construction has been made by the highest officers in the executive department, and, while not generally controlling, such construction should not be disregarded or overturned except for the most cogent reasons and unless clearly erroneous. Brewster vs. Gage, 280 U. S. 327, 74 L. Ed. 457, 50 S. Ct. 115.

In this connection attention is directed to the following quoted portions of Regulations numbered 5339 and 5340 promulgated on January 27, 1936, by the Administrator of Veterans' Affairs who is charged with the duty of administering all Federal laws concerning veterans and their estates.

"GUARDIANSHIP POLICY REGARDING APPLICATION OF SECTION (3, PUBLIC NO. 262. 74th CONGRESS), TO CLAIMS OF CREDITORS AND TAXATION OF FUNDS IN THE HANDS OF GUARDIANS, CURATORS, CONSERVATORS, ETC.

"*Claims of Creditors*

"5339. (Section 3, Public No. 262, 74th Congress, applies to payments made to or on account of a beneficiary under the laws relating to veterans and exempts such payments, either before or after receipt by the beneficiary, from the claims of creditors, and provides that same shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever. *The language of the section as a whole is such that it is believed such exemption extends also to property in which the proceeds of such payments are or may be invested.* * * *) (Emphasis supplied.)

"*Taxation of Funds in Hands of Fiduciary*

"5340. (Payments made to or on account of a beneficiary under any of the laws relating to veterans are exempt from taxation. *Property purchased wholly or in part out of such payments is not exempt from taxation.* * * * *)" (Emphasis supplied.)

The distinction which was thus drawn between "claims of creditors" and "taxation" is manifest and these regulations clearly show the construction which has been placed upon the exemption provision of the statute here involved by the highest officer of the executive department of the Government to which veterans and their fiduciaries turn for advice.

It is therefore submitted that by the cardinal rules of statutory construction, as well as by its judicial and legislative history, the statute is shown to apply to payments invested for the benefit of the veteran.

POINT III.

The Statute, Being Within the Constitutional Power of the Congress, Is Controlling, and Should Be Liberally Construed to Accomplish the Intent and Purpose Thereof.

The general rule in both State and Federal Courts is that exemptions—other than as to taxation—are to be liberally construed. Hills vs. Joseph, 229 Fed. 865, 25 C. J. p. 10, Sec. 8(b), and cases cited therein. This is the rule in North

Carolina, Goodwin vs. Claytor, 137 N. C. 224, 49 S. E. 173, page 177. That exemptions as to creditors' claims are to be liberally construed as contrasted with the strict rule as to tax exemptions, recognized by the Supreme Court of Kansas in State vs. Shawnee County Commissioners, supra, and by the Supreme Court of California in Estate of Ferarazza, 28 Pac. (2d) 670, is clearly shown by the cases cited in 25 C. J., supra; and is based upon the public policy of protecting certain individuals, or certain things, for the greater good of the whole. This is particularly true as to pensions, or bounties, workmen's compensation, and insurance. Creditors have no vested interest in such benefits, even though the recipient should pay his just part of Government expense. Nor does the fact that the judgment is for an injury arising in tort affect the applicability of a general exemption, 25 C. J. p. 93, Sec. 155 B, and cases cited.

These principles are discussed, in his apt manner, by the then Chief Justice Cardoza in rendering the decision of the Court of Appeals of New York in the case of Surace vs. Danna, 248 N. Y. 18, 161 N. E. 315. That case involved the exemption provided in a Workmen's Compensation Law, and the decision held that the exemption extended to the moneys received under the Act and deposited in a bank. The decision cited with approval the case of Bank vs. Carpenter, 119 N. Y. 550, 23 N. E. 1108, wherein the same Court held that the claim of a judgment creditor may not be satisfied by way of execution on property purchased by a veteran out of the proceeds of his United States pension, since the New York Statute exempted United States pensions from levy, execution, or seizure. Said the Court (161 N. E. at page 317): "The end to be served, the mischief to be averted, supply the clews and the keys by which construction must be governed."

To like effect is the decision of the Supreme Court of Mississippi in the case of De Baum vs. Hulett Undertaking Co., 169 Miss. 488, 153 So. 513, involving a similarly worded statute, Section 618, Title 38, U. S. C.

That the Congress has the constitutional power to so protect the disabled veteran by safeguarding the proceeds of his compensation and insurance payments seems undisputed. As said in the last above cited case, De Baum vs. Hulett, etc., the power is derived from Section 8, Article I of the Constitution, the war or defense powers; and as pointed out by this Court in the case of United States vs. Hall, 98 U. S. 343, 25 L. Ed. 180, such power has been exercised ever since the First Congress to insure that the proceeds of the pension or bounty will inure solely to the benefit of the pensioner.

Subsequent decisions of this Court are not to the contrary, but the Supreme Court of North Carolina in the instant case cites as authority for such contrary view, the language of this Court in the case of Lawrence vs. Shaw, supra, which reads as follows: "In order to carry out the intent of the statute, the avails of the Government warrants or checks must be deemed exempt until they are expended or invested." It is apparent, however, that this Court was then speaking of the tax exemption only, for that was the question before it. It may appear, aside from the statute, that the same rule should apply as to exemption from claims of creditors if the moneys have been *expended*, although not if merely invested. But suppose they, being only enough for actual subsistence, were *expended* for food and clothing. Should the veteran and his family starve or freeze or be made objects of charity because creditors exact their due? The Congress, it is clear, has established a public policy to protect the veteran in his enjoyment of his pension under such circumstances. Would the situation be any different as to investment of such benefits? Again, aside from the provisions of the statute, should a veteran be obliged to retain his pension or insurance money in his pocket to prevent seizure? The Court said in Lawrence vs. Shaw, supra, "Congress has declared that the payments of benefits by the Government shall be exempt not only before but 'after receipt by the beneficiary.' We cannot conceive that it was

the intent of Congress that the veteran should lose the benefit of this immunity, which would attach to the moneys in his hands, by depositing the government warrants or checks in bank to be collected and credited in the usual manner. These payments are intended primarily for the maintenance and support of the veteran. To that end neither he nor his guardian is obliged to keep the moneys on his person or under his roof."

The laws of the State of North Carolina required the guardian in the instant case to invest the benefit payments received by him from the Government for the maintenance and support of his ward, as is evidenced by the quoted portion of the Public Statutes of North Carolina, Chapter 33, Session 1929 (Michie's Code of North Carolina, Chapter 40-a, Section 2202 (13)—Investment of Funds), which appears on page 34 of the Appendix hereof, and which statute at the time of its passage by the Legislature of North Carolina in 1929 was entitled "An Act regulating the Guardianship of Incompetent Veterans and of minor children of disabled or deceased Veterans and the Committment of Veterans to the United States Government Hospitals."

Can a State thereby deprive the incompetent veteran of the protection granted by the Federal law and render his benefit payments so invested subject to the claim of creditors? As to taxation the Congress has specifically so provided, but as to the claims of creditors, it is insisted that the intention of Congress was just the opposite.

Would such narrow scope be given to the Congressional power and intent as to protecting a beneficiary's estate from embezzlement—viz. that Section 2 of the same Act, Public No. 262, 74th Congress, should extend only to payments as money and not to same when invested? The case of United States vs. Hall, supra, seems to have settled this question.

Should the broad supervisory responsibility in guardianship matters prescribed by Section 1 of said Act (Sec. 450, Title 38, U. S. C., as amended) be so narrowly construed as

to be confined to moneys only in the hands of a fiduciary? The language of this Court in the case of Hines vs. Lowrey, No. 24, October Term, 1938, decided November 7, 1938, 83 L. Ed. 62, seems a clear recognition of a broader intent and purpose.

The only other basis given by the Supreme Court of North Carolina for its decision in the instant case is that a liberal construction would "lead us into chaos. When the investments are bona-fide made and a novation takes place, taxes attach and creditors have a right to collect their just debts. We hardly think that the noble, heroic veterans would have it otherwise."

With respect to the alleged chaotic results, it is respectfully submitted that if carrying out the legislative intent so results, the remedy lies with the Congress. But nothing is shown to indicate that such would be the result. Perhaps more is to be feared in this respect if the State Courts do not give effect to the Federal laws.

With respect to the reference to the principle of novation, it is fundamental that this term implies the substitution of a new obligation for an old one which is thereby extinguished. 46 C. J. 573, Sec. 1, et seq., and cases cited. It arises only in contract, Ibid p. 578. Guardians may not, without a court order, change the character of trust funds held by them or make a novation—excepting negotiable instruments, Ibid p. 584.

It is clear that "novation" in no manner concerns the situation here presented. There is no privity of contract as between the veteran, sane or insane, and his creditors, actual or potential, as to his pension or insurance—indeed such is prohibited by the Federal statute; he is not permitted to assign or pledge it.

The situation which is here presented is that of an incompetent veteran whose guardian in accordance with the laws of the State of North Carolina has invested the payments made for his benefit by the United States Government. Had the guardian done otherwise it could have well been con-

tended that he was derelict in his duty and subject to removal. Surely this is not a case of one choosing "to trade in land or in merchandise, in bonds or in shares of stock." The beneficiary of the Government did not choose, indeed, he could not choose, and his guardian did only that which he was compelled to do with the payments of benefits.

Even though there may have been a change in the species of the funds paid for the veteran's benefit, the protection and immunity created by Congress goes to the substance, not the form—to the thing itself, that is the funds derived from the payments even though the payments have been invested for they still remain benefits for the veteran and are held by his guardian as such. Certainly the intent and purpose of Congress must not be thwarted and the immunity and protection which Congress has given to the "Payments of benefits" to veterans must not be swept aside and the veteran and his estate penalized because the guardian was faithful to his trust and changed the form and not the substance of the benefits.

Summary

To give the narrow construction to the language of Section 454(a), Title 38, U. S. C., as decided by the Supreme Court of North Carolina would be contrary to the judicial and legislative history of said Act; would raise a serious question as to the meaning of portions of Sections 1 and 2 of the same Act, Public No. 262, 74th Congress; would be contrary to the accepted rules of statutory construction, and would deprive veterans, and other beneficiaries of the full immunity and protection intended by Congress. In so construing the Federal statute, the North Carolina Supreme Court misinterpreted the decision of this Court in the case of Lawrence vs. Shaw, supra, and deprived the veteran of a right, privilege, or immunity guaranteed by said Federal law.

CONCLUSION

It is respectfully submitted that this Court has jurisdiction of the subject matter of this action; that petitioners are entitled to appear and seek a review by this Court of the judgment below; that such judgment is erroneous; and in view of the importance of the question, and its wide application to many other cases of similar trusts, as well as in thousands of cases of veterans *sui juris*, this Court should grant the writ of certiorari as requested herein, and reverse said judgment.

JOHN W. WOOD,
Attorney for Petitioners

APPENDIX

Hearings Before the Sub-Committee on Hospitalization and Guardianship of Incompetent Veterans, Committee on World War Veterans' Legislation of House of Representatives, by Authority of H. Res. 409, 73rd Congress, Part 3, Pages 261 to 264, December 13, 1934.

* * * * * * * * * *

The Chairman. We have added, or, at least, we are suggesting that this proviso be added:

> Provided, That the provision hereof relating to claims of creditors may be waived by the Administrator of Veterans' Affairs when such waiver is shown to be for the sole benefit of an incompetent or minor beneficiary. Sections 4747, Revised Statutes; 308, World War Adjusted Compensation Act, and 2[9], World War Veterans' Act, are repealed, and all other acts inconsistent herewith are modified hereby.

Did you make that in your recommendation, General?

General Hines. I do not recall that. Would you let Mr. Odom explain what his views are on that? I do not recall that I brought that up.

The Chairman. It is right here on the last page, Mr. Odom.

General Hines. It will probably bring some question, I imagine, from creditors, will it not?

Mr. Edward E. Odom. May I address my remarks first to the sixth line in that section, and then come to the chairman's question, because I think it has a bearing on it?

The Chairman. Very well.

Mr. Odom. The suggestion that the Administrator made, I believe, read this way:

> This provision shall not attach to any property purchased wholly or in part out of such payments, nor to claims of the United States arising under such laws.

The first clause of that suggested sentence was intended to bring this section into line with the decision of the Supreme Court of the United States in the case of Trotter vs. Tennessee; and, as applied to taxation, probably is correct if the intention of the Congress is that property purchased out of the insurance and compensation payments should not be exempt from taxation. The Supreme Court has held that under the present law it is not exempt; but there is a serious question whether—for example, if a veteran, as I think was suggested by Justice Cardozo, takes his compensation and buys a barrel of flour with it or a side of meat, that that should not be exempt, the same as the money itself; or, if he invests it in bonds, that the bonds should or should not, as might be decided by the Congress, be exempt from the claims of his creditors.

It was our understanding that this would not affect the present holding that these funds, no matter in what form they are invested, would be exempt from the claims of creditors. But there is a case pending in the Supreme Court of the State of North Carolina, and another one in the Kentucky Supreme Court, where the decision of the Supreme Court of the United States in the case of Trotter vs. Tennessee is being argued as applicable to the claims of creditors; that is, that if the veteran puts his money in property, that it is no longer exempt from the claim of the creditor.

If that is the proper effect of this language, it occurs to us that the committee might desire to give some consideration to whether they would not change that so as to make it clear that it is only on the question of taxation that the property shall not be exempt.

In other words, it could be argued, I suppose well, that the veteran's property should be taxed the same as anybody else's. Now, whether his property should also be free from the claims of creditors when that property is purchased with these funds, is the question that ought to be considered by the committee at this time, I think.

Now, coming to the question of the chairman on this proviso, that the Administrator of Veterans' Affairs should have authority to waive the exemption when it seems to be for the benefit of the veteran or the beneficiary to do so; my theory, Mr. Chairman, may be wrong, but it is my theory that the Congress of the United States, under the Consti-

tution, has authority to say what shall be the administrative duties and the administrative responsibilities and the administrative authority of any employee or officer of the United States Government. I question very seriously whether the Congress of the United States, on a matter that is within the powers reserved by the Constitution to the States, could enact legislation which would modify the laws of the States or the procedure of the courts on a question solely within the States' jurisdiction.

It is my thought, therefore, that, while this would give the Administrator of Veterans' Affairs authority not to insist upon the court granting the exemption—and I think he has that authority now without it being in the act—that it would not and could not, by virtue of the constitutional provisions, give any authority to the court to waive that exemption. In other words, if the court has authority to waive the exemption—I am speaking now of a court having general equity powers rather than a probate court having more limited statutory jurisdiction—that authority exists by virtue of such powers and not by virtue of a Federal act.

The Chairman. I think we can agree on it. What do you think about it, Mr. Pappenfort?

Mr. Pappenfort. A Federal statute could not, of course, give an administrative official the power to waive a State law. But this proviso merely gives the Administrator power to waive such claims as he may deem equitable, insofar as objecting to those claims in court is concerned. That is all. In other words, if the Director, under this power, waived a claim, and then the court, a State court, decided to allow it, of course, the decision of the State court would prevail.

Mr. Griswold. You cannot waive the defense to a claim.

Mr. Pappenfort. Yes.

The Chairman. Do you care to make a statement, Mr. Odom?

Mr. Edward E. Odom. With one reservation, Mr. Chairman; we feel that we have a duty to the guardian as well as to the ward, always keeping in mind that the ward's interests are paramount. We feel that we should not permit a guardian, particularly if that guardian is the mother or other near relative of the beneficiary, to be placed in a position where someone might come along later on and hold that guardian liable for some failure to act, which

might be this very thing, to claim an exemption under the law.

The Chairman. Just a minute. You are getting into a fundamental question, as I view it. You say you do that to protect the guardian.

Mr. Odom. To a certain extent, keeping in mind always, Mr. Chairman, that the interest and welfare of the ward are paramount.

The Chairman. It is the idea, then, of the Bureau that the primary duty is the duty to the ward?

Mr. Odom. Always, without any reservation whatsoever; and if there is the slightest degree of difference of interest between the guardian and the ward, we absolutely take care of the ward's interests.

But that does not mean, Mr. Chairman, as I see it, that we can sit by and see the mother of a beneficiary, who happens to be the guardian of the beneficiary, or any other guardian—perhaps if it is a lawyer or a trust company we should not be so solicitous about them—fail to protect themselves by failing to claim the exemption.

The Chairman. All guardians have their own lawyers.

Mr. Odom. No, sir; we act as lawyers for a great many of them.

Mr. Griswold. You do not mean to say that you act for the beneficiary and act for the guardian, two diverse interests?

Mr. Odom. In cases which are so small that it is hardly possible for the guardian to employ an attorney to make up the accounts, we do, if the guardian requests it, make up those accounts for them and file them with the Court.

General Hines. May I say a word? In other words, many of these accounts are small and many of them, custodial awards, it would be a hardship on the guardian, for example, a mother who handles the matter. But Mr. Odom is going beyond what I understood from Mr. Pappenfort. In other words, we have the right to call the attention of the cor to this matter, and if the court turns us down, which th have the jurisdiction to do, I think that settles it.

The Chairman. I think we have had enough testimony on that. It is not as important as other matters and I think we will proceed on other matters.

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Public Statutes of North Carolina, Chapter 33, Session 1929 (Michie's Code of North Carolina, Chapter 40-a, Section 2202 (13)—Investment of Funds).

Investment of funds—Every guardian shall invest the funds of the estate in any of the following securities:

(a) United States Government bonds.

(b) State of North Carolina bonds issued since the year one thousand eight hundred seventy-two.

(c) By loaning the same upon real estate securities in which the guardian has no interest, such loans not to exceed fifty per cent (50%) of the actual appraised or assessed value, which ever may be lower, and said loans when made to be evidenced by a note, or notes, or bond or bonds, under seal of the borrower and secured by first mortgage or first deed of trust. Said guardian before making such investment on real estate mortgages, shall secure a certificate of title from some reputable attorney certifying that the same is the first lien on real estate and also setting forth the tax valuation thereof for the current year; Provided said guardian may purchase with said funds a home or farm for the sole use of said ward or his dependents upon petition and order of the clerk of the Superior Court, said order to be approved by the resident or presiding judge of the Superior Court and provided further that copy of said petition shall be forwarded to said bureau before consideration thereof by said court.

It shall be the duty of guardians who shall have funds invested other than as provided for in this section to liquidate same within one year from the passage of this law: Provided, however, that upon the approval of the judge of the Superior Court, either residing in or presiding over the courts of the district, the Clerk of the Superior Court may authorize the guardian to extend from time to time the time for sale or collection of any such investments: that no extension shall be made to cover a period of more than one year from the time the extension is made.

The Clerk of the Superior Court of any county in the state or any guardian who shall violate any of the provisions of this section shall be guilty of a misdemeanor, punishable by fine or imprisonment or both in the discretion of the court.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 541

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier, Incompetent Veteran,
Petitioners,

vs.

CURLEY BRYANT, *Respondent*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

Certiorari Granted January 30, 1939

PETITIONERS' BRIEF

JOHN W. WOOD,
Attorney for Petitioners.

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INDEX

	PAGE
Statement of the Case	1
Assignments of Error	3
Statutes Relied Upon	3
Question Presented	4
Argument	5
Epitome	5
Point I	5
Point II	18
Point III	22
Point IV	27
Summary	31
Conclusion	32
Appendix	33

Table of Cases Cited

Armstrong Paint & Varnish Works v. *Nu-Enamel Corp.*, 83 L. Ed. (Adv.) 183 20

Bank v. *Carpenter*, 119 N. Y. 550, 23 N. E. 1108 ..... 23, 25, 26, 27

Bank of Commerce v. *Tennessee*, 161 U. S. 134, 40 L. Ed. 645, 16 S. Ct. 456 9

Brewster v. *Gage*, 280 U. S. 327, 74 L. Ed. 457, 50 S. Ct. 115 20

Chicago Theological Seminary v. *Illinois*, 188 U. S. 662, 47 L. Ed. 641, 23 S. Ct. 386 9

Culp v. *Webster*, 70 Pac. (2d) 273 19

De Baum v. *Hulett Undertaking Co.*, 169 Miss. 488, 153 So. 513 24

Dellinger v. *Tweed*, 66 N. C. 206 23

Estate of Ferarazza, 28 Pac. (2d) 670 23

Gary v. *Cannon*, 38 N. C. 64 28

Goodwin v. *Claytor*, 137 N. C. 224, 49 S. E. 173 23

Hills v. *Joseph*, 229 Fed. 865 ..... 22, 23

PAGE

Hines v. *Lowrey*, 83 L. Ed. (Adv.) 62 29

***Kern River Co.* v. *United States*, 257 U. S. 147, 66 L. Ed. 175, 42 S. Ct. 60** 20, 21

***Lawrence* v. *Shaw*, 300 U. S. 245, 81 L. Ed. 623, 57 S. Ct. 443, 210 N. C. 352, 186 S. E. 504** 3, 16, 17, 20, 24, 25, 27, 32

***McIntosh* v. *Aubrey*, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561** 6

Martin v. *County*, 201 N. C. 63, 158 S. E. 847 16

Murphy, In re, 237 N. Y. S. 448 7

Oakley v. *Lasater*, 172 N. C. 96, 89 S. E. 1063 23

***Pagel* v. *Pagel*, 291 U. S. 473, 78 L. Ed. 921, 54 S. Ct. 497** 10, 19, 20

Payne v. *Jordan*, 36 Ga. App. 787, 138 S. E. 262, 152 Ga. 367, 110 S. E. 4 and 452 7

Rucker v. *Merck*, 172 Ga. 793, 159 S. E. 501 7

Shepherd v. *Murill*, 90 N. C. 208 23

***Spicer* v. *Smith*, 288 U. S. 430, 77 L. Ed. 875, 53 S. Ct. 415** 20, 30, 31

State, etc., v. *Bank*, 207 N. C. 697, 178 S. E. 487 (Certiorari denied 295 U. S. 761, 79 L. Ed. 1704, 55 S. Ct. 921) 10

***State* v. *Shawnee County Commissioners*, 132 Kan. 233, 294 Pac. 915 (Certiorari denied, 283 U. S. 855, 75 L. Ed. 1462, 51 S. Ct. 648)** 7, 8, 16, 23

Surace v. *Danna*, 248 N. Y. 18, 161 N. E. 315 ..... 23, 24

***Trotter* v. *Tennessee*, 290 U. S. 354, 78 L. Ed. 358, 54 S. Ct. 138** 7, 8, 9, 10, 16, 17, 30

United States v. *Hall*, 98 U. S. 343, 25 L. Ed. 180 24

Walton v. *Cotton*, 19 How. (U. S.) 355, 15 L. Ed. 658 22

Wilson v. *Sawyer*, 177 Ark. 492, 6 S. W. (2d) 825 7

Statutes Cited

Act of October 6, 1917, Section 402 (40 Stat. 398) 7

Act of August 12, 1935, (Public No. 262, 74th Congress, 49 Stat. 607) 1, 2, 3, 4, 5, 10, 11, 15, 16, 18, 29, 31

Constitution of the United States, Article I, Section 8 24

New York Code of Civil Procedure, Section 1393 (now Civil Practice Act, Par. 667) 23, 25

PAGE

North Carolina Public Laws, Chapter 33, Session 1929, (Michie's Code of North Carolina, Chapter 40-a, Section 2202 (13)) 28

North Carolina Public Laws, Chapter 262, Session 1933 ..... 28, 37

Public No. 262, 74th Congress, Section 5, (49 Stat. 607) 3, 4, 11

Title 28, U. S. C., Section 344, Paragraph (b), (Section 237, Judicial Code, as Amended, 43 Stat. 937) 3

Title 38, U. S. C., Section 54, (Revised Statutes 4747, Act of March 3, 1873) 3, 6, 7, 10, 12

Title 38, U. S. C., Section 450, (Public No. 262, 74th Congress, Section 1, 49 Stat. 607) 10, 29

Title 38, U. S. C., Section 454, (World War Veterans' Act, 1924, Section 22, 43 Stat. 613) 2, 3, 6, 7, 8, 10, 12, 16

Title 38, U. S. C., Section 454(a), (Public No. 262, 74th Congress, Section 3, 49 Stat. 607) 1, 2, 3, 4, 5, 10, 11, 15, 16, 18, 31

Title 38, U. S. C., Section 618, (43 Stat. 125) 24

War Risk Insurance Act, Section 28, as Amended by Act of June 25, 1918, (40 Stat. 609) 7

Other Citations

Hearings of Subcommittee of Committee on World War Veterans' Legislation, H. R. 409, 73rd Congress 12, 15, 33, 34, 35, 36

Recommended Legislation of Administrator of Veterans' Affairs to Subcommittee of Committee on World War Veterans' Legislation, H. R. 409, 73rd Congress 11

Recommended Legislation of Subcommittee of Committee on World War Veterans' Legislation, H. R. 409, 73rd Congress 13, 14

Regulations 5339 and 5340 of United States Veterans' Administration 21

Report of Subcommittee of Committee on World War Veterans' Legislation, H. R. 409, 73rd Congress 11, 13, 14

Report of Finance Committee of Senate, No. 1072 S, 74th Congress 14, 15

Statutes Relied On

PAGE

Title 38, U. S. C., Section 454(a), (Public No. 262, 74th Congress, Section 3, Act of August 12, 1935, 49 Stat. 607) 1, 2, 3, 4, 5, 10, 11, 15, 16, 18, 31

Public No. 262, 74th Congress, Section 5 (49 Stat. 607) 3, 4, 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 541

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier, Incompetent Veteran,
Petitioners,

vs.

CURLEY BRYANT, *Respondent*

BRIEF OF PETITIONERS

STATEMENT OF THE CASE

Petitioners herein seek reversal of the decision of the Supreme Court of North Carolina in its Cause No. 172, Fall Term, 1938, styled Curley Bryant v. John Carrier and J. Harvey Carpenter, Guardian of John Carrier, 214 N. C. 174, 198 S. E. 651, wherein that Court held that the respondent herein, notwithstanding the provisions of Section 454(a), Title 38, U. S. C., could satisfy his judgment claim against the incompetent veteran out of the bonds and negotiable notes purchased for the benefit of the incompetent by his guardian out of funds derived

wholly from payments of disability compensation and War Risk Term Insurance by the United States.

The incompetent veteran owns United States Government bonds in the principal amount of $8,350, and negotiable notes of the face value of $3,997 (R. 4, 5). These are listed by the incompetent's guardian, the petitioner J. Harvey Carpenter, as "Investments" (R. 4) and were found by the Trial Court to be "Investments" (R. 6). The Trial Court further found and it is undisputed, that these investments were made for the incompetent veteran by his guardian "from the proceeds of moneys paid to him by the United States Government on account of his disability incurred and insurance in the World War" (R. 6).

At the June-July, 1938, Term of the Superior Court of Rutherford County, North Carolina, respondent obtained a judgment against petitioner John Carrier, an incompetent World War veteran, in the amount of $1,500 (R. 1, 3), which judgment was affirmed by the Supreme Court of North Carolina, 214 N. C. 191, 198 S. E. 619.

While that appeal was pending respondent issued execution on his judgment against the incompetent veteran (R. 1, 3), and petitioners obtained a temporary restraining order enjoining the respondent from proceeding by way of execution on the judgment on the ground that all of said veteran's estate, consisting of the above mentioned bonds and notes being investments made of moneys paid for the benefit of said veteran by the United States as compensation and disability insurance (War Risk Term Insurance), is exempt from execution on a creditor's claim by virtue of the provisions of Sections 454 and 454(a), Title 38, U. S. C., (R. 1-4). Said temporary restraining order was dissolved by the said Superior Court on the ground that such moneys having been invested, had lost their character as exempt property and said Court held that such investments were subject to execution (R. 5-7). Upon appeal the Supreme Court of the State on September 28, 1938, affirmed this decision of the Superior Court, 214 N. C. 174, 198 S. E. 651.

and although conceding the power of Congress to exempt, held that such exemption extends only to the money as such, and not the investments therefrom, citing *Lawrence* v. *Shaw*, 300 U. S. 245, 81 L. Ed. 623, 57 S. Ct. 443, in support thereof (R. 9-16). Petitioners herein, contending that the Supreme Court of North Carolina erred in applying the rule as to exemption from taxation to exemption to claims of a creditor, petitioned this Court for certiorari on December 23, 1938, under the provisions of Title 28, U. S. C., Section 344, paragraph (b), Section 237, Judicial Code, as amended, and the petition was granted on January 30, 1939 (R. 17).

ASSIGNMENTS OF ERROR

It is respectfully submitted that the Supreme Court of North Carolina erred in holding that:

1. The judgment of the Superior Court dissolving the injunction and refusing to make same permanent should be affirmed.

2. In holding that the assets of the veteran are subject to execution.

3. In holding that moneys paid a veteran, by way of disability compensation and insurance benefits, when invested are not subject to the exemptive provisions of Section 454(a) respecting claims of creditors and attachment.

STATUTES RELIED UPON BY PETITIONERS

Section 454(a), Title 38, U. S. C., Section 3, Public No. 262, 74th Congress, which repealed Section 454 (Sec. 22, World War Veterans' Act) and Section 54, Title 38, U. S. C., (R. S. 4747); and Section 5, Public No. 262, are quoted in full:

Section 454(a), Section 3, Public No. 262, 74th Congress.

"Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, *either before or after receipt by the beneficiary.* Such provisions shall not attach to claims of the United States arising under such laws *nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments.* Section 4747 of the Revised Statutes and Section 22 of the World War Veterans' Act, 1924, are hereby repealed, and all other Acts inconsistent herewith are hereby modified accordingly. The provisions of this section shall not be construed to prohibit the assignment by any person, to whom converted insurance shall be payable under Title III of the World War Veterans' Act, 1924, of his interest in such insurance to any other member of the permitted class of beneficiaries." (Emphasis supplied.)

Section 5, Public No. 262, 74th Congress.

"That this Act shall take effect and be in force from and after its passage, but the provisions hereof shall apply to payments made heretofore under any of the Acts mentioned herein."

QUESTION PRESENTED

WHETHER THE PROVISIONS OF SECTION 454(a), TITLE 38, U. S. C., AND SECTION 5, PUBLIC NO. 262, 74TH CONGRESS, PREVENT SATISFACTION OF A JUDGMENT BY WAY OF EXECUTION ON THE PERSONAL ESTATE OF THE INCOMPETENT VETERAN, IN THE HANDS OF HIS GUARDIAN, DERIVED WHOLLY FROM PAYMENTS UNDER THE WORLD WAR VETERANS' ACT AND COGNATE VETERAN LEGISLATION.

ARGUMENT

Epitome

Upon each of the above assignments of error the following argument is respectfully submitted:

I. The judicial and legislative history of Section 454(a) clearly shows that it was the manifest intent and purpose of Congress that the exemptive provisions thereof relating to claims of creditors comprehended not only the benefits paid but also the proceeds of such benefits invested in usual form.

II. Under well settled principles of statutory construction Section 454(a) must be construed to exempt from the claims of creditors not only the benefits paid but also the proceeds thereof invested in the usual form.

III. Section 454(a), being within the constitutional power of the Congress, is controlling, and should be liberally construed to accomplish the purpose thereof.

IV. The construction given to the language of Section 454(a) by the Supreme Court of North Carolina deprives an insane veteran of the protection which this Court has held is afforded to a competent veteran.

POINT I

The Judicial and Legislative History of Section 454(a) Clearly Shows That It Was the Manifest Intent and Purpose of Congress That the Exemptive Provisions Thereof Relating to Claims of Creditors Comprehended Not Only the Benefits Paid but Also the Proceeds of Such Benefits Invested in Usual Form.

Section 454(a), (Section 3, Public No. 262, 74th Congress, entitled "An Act to safeguard the estates of veterans de-

rived from payments of pension, compensation * * * and insurance, and for other purposes") repealed R. S. 4747 (Section 54, Title 38, U. S. C.), and Section 454 (Section 22, World War Veterans' Act, 1924) and modified all other Acts inconsistent with its provisions.

R. S. 4747 read as follows:

> "54. *Attachment, levy, or seizure of moneys due pensioners prohibited.* No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner."

Section 22 read:

> "454. *Assignability and exempt status of compensation, insurance, and maintenance and support allowances.* The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation. Such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable.
>
> "The provisions of this section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Part III of this chapter of his interest in such insurance to any other member of the permitted class of beneficiaries."

The former statute, R. S. 4747, Act of March 3, 1873, was construed by this Court, in *McIntosh* v. *Aubrey*, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561, to the effect that the

words "Money due or to become due" applied to pension moneys in the pension office or the hands of its agents, and that the exemption from execution did not extend to property purchased out of pension funds.

Section 454, quoted above, (Section 22, World War Veterans' Act), was originally Section 28 of the War Risk Insurance Act as amended by the Act of June 25, 1918. (Section 402 of the Act of October 6, 1917, containing similar language referred only to insurance payments.) The language of this section differed from that of R. S. 4747 in that it did not use the words "due or to become due", but instead "the * * * compensation and insurance payable * * * shall not be subject to the claims of creditors of any person to whom an award is made * * *".

The Supreme Courts of several States construed this language broadly to apply not only to the funds after their receipt by the beneficiary but to property purchased in part or wholly out of such funds—following *Payne* v. *Jordan*, 36 Ga. App. 787, 138 S. E. 262. See case same title 152 Ga. 367, 110 S. E. 4 and 452. *Wilson* v. *Sawyer*, 177 Ark. 492, 6 S. W. (2d) 825. *In re Murphy*, 237 N. Y. S. 448.

The departure from this liberal construction arose over the question of exemption from taxation. While the Supreme Court of Georgia in the case of *Rucker* v. *Merck*, 172 Ga. 793, 159 S. E. 501, held the exemption of Section 22 extended also to taxation of property purchased with benefits received, other State Supreme Courts declined to follow. The Supreme Court of Kansas held, in *State* v. *Shawnee County Commissioners*, 132 Kan. 233, 294 Pac. 915, that the word "payable" as used in Section 22 meant the same as "Due or to become due" used in R. S. 4747, and hence that the exemption as to taxation did not extend to property purchased out of the benefits received. This Court denied certiorari in that case, 283 U. S. 855, 75 L. Ed. 1462, 51 S. Ct. 648; but the same question was considered in the case of *Trotter* v. *Tennessee*, 290 U. S. 354, 78 L. Ed. 358, 54 S. Ct. 138. In that case the Supplemental Brief of the Peti-

tioner showed that the legislative history of Section 22 clearly demonstrated that the word "payable" as used therein was synonymous with "paid". This Court did not base its decision on the construction of said word as did the Supreme Court of Kansas in the case of *State* v. *Shawnee County Commissioners*, supra, but instead held that

> "*Exemptions from taxation are not to be enlarged by implication if doubts are nicely balanced.* Chicago Theological Seminary v. Illinois, 188 U. S. 662, 674, 47 L. Ed. 641, 649, 23 S. Ct. 386. On the other hand, they are not to be read so grudgingly as to thwart the purpose of the lawmakers. The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. McIntosh v. Aubrey, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561. We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. Cf. McIntosh v. Aubrey, supra; State ex rel. Smith v. Shawnee County, 132 Kan. 233, 294 Pac. 915; Wilson v. Sawyer, 177 Ark. 492, 6 S. W. (2d) 825; and Surace v. Danna, 248 N. Y. 18, 24, 25, 161 N. E. 315. Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings. The statute speaks of 'Compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, *must pay their tribute to the state.* If immunity is to be theirs, the statute conceding it must speak in clearer terms than the one before us here." (Emphasis supplied.)

It will be observed that although this decision was rendered prior to the enactment of the amendatory and clarifying statute involved in the instant case, the question was

then left open whether the exemption extended to moneys derived from such payments.

It also is apparent that this decision was based upon the conflict between the none too clear language of the statute then before the Court and the taxing power of a sovereign state. In refusing to apply the exemption and suspend the power of taxation by the State this Court followed the rule of statutory construction expressed in the case of *Chicago Theological Seminary* v. *Illinois*, 188 U. S. 662, 672, 47 L. Ed. 641, 23 S. Ct. 386, in which it was said:

> "The rule is that, in claims for exemption from taxation under legislative authority, the exemption must be plainly and unmistakably granted; it cannot exist by implication only; a doubt is fatal to the claim."

To like effect is the opinion of this Court in the case of *Bank of Commerce* v. *Tennessee*, 161 U. S. 134, 146, 40 L. Ed. 645, 16 S. Ct. 456, where it is said:

> "Taxes being the sole means by which sovereignties can maintain their existence, any claim on the part of any one to be exempt from the full payment of his share of taxes on any portion of his property must on that account be clearly defined and founded upon plain language. There must be no doubt or ambiguity in the language used upon which the claim to the exemption is founded. It has been said that a well founded doubt is fatal to the claim; no implication will be indulged in for the purpose of construing the language used as giving the claim for exemption, where such claim is not founded upon the plain and clearly expressed intention of the taxing power."

The import of the decision in *Trotter* v. *Tennessee*, supra, was strictly limited to the specific point therein presented, to wit: Exemption from taxation by a sovereign state upon the facts of that case. Indeed, the decision of the Court could not well have been otherwise, in view of the rules of construction recognized and so aptly stated in the cases

just cited. The instant case, however, is readily distinguishable because the exemption of lands from the taxing power of the state is quite a different matter from the exemption of an incompetent veteran's estate from the claims of his individual creditors.

This Court had occasion to consider the other phase of the prior exemption statute—that as to claims of creditors—in *Pagel* v. *Pagel*, 291 U. S. 473, 476, 78 L. Ed. 921, 54 S. Ct. 497, on a claim that such exemption, as to creditors of the deceased veteran, extended to insurance reverting to his estate (not due the veteran himself or his beneficiary) and held, "The purpose of the exemption, Sec. 454, is to safeguard to the insured soldier and the beneficiary payments made under the policy to them or for their benefit. • • • The language of the statute limits the exemption to 'any person to whom an award is made.' It is clear that the statute does not extend the exemption beyond the insured and beneficiary."

Thereafter, and on January 28, 1935, the Supreme Court of North Carolina, in *State, etc.*, v. *Bank*, 207 N. C. 697, 178 S. E. 487, applied the rule as to taxation announced by this Court in the case of *Trotter* v. *Tennessee*, supra, to the claims of the State as creditor—holding specifically that the property purchased out of the benefits received and invested was not exempt. This Court denied certiorari, 295 U. S. 761, 79 L. Ed. 1704, 55 S. Ct. 921.

It was to cure this uncertainty that the legislation which became Section 3 of the Act of August 12, 1935—Public No. 262, 74th Congress—was proposed. Said act was entitled: "To safeguard the estates of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance, and for other purposes." Section 1 thereof amended Section 450, Title 38, U. S. C., as to guardianship matters. Section 2 repealed the embezzlement statutes and enacted a more stringent section as to embezzlement by guardians and other fiduciaries. Section 3 repealed R. S. 4747 and Section 454, Title 38, U. S. C., and

re-enacted in language intended to be clearer certain provisions thereof, and it is this section which is involved in the instant case. Section 4 contained a separability clause. Section 5 provided that the provisions of the Act should be prospectively effective as to payments made prior to its enactment.

This Act, Public No. 262, 74th Congress, Title 38, Section 454(a), U. S. C., was enacted as the result of an investigation made by a subcommittee of the Committee on World War Veterans' Legislation of the House of Representatives under H. R. 409, 73rd Congress, and as shown on page 71 of the Report of said subcommittee, submitted January 8, 1935, the Administrator of Veterans' Affairs recommended to it, page 74, that the section of the statute which is involved in the instant case be amended to read as follows:

> "SECTION TO REPLACE SECTION 22 WORLD WAR VETERANS' ACT, SECTION 454, TITLE 38, U. S. C., AND SECTION 4747 REVISED STATUTES
>
> "Section —. Payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, *either before or after receipt by the fiduciary, so long as they remain unexpended for his benefit. Such provisions shall not attach to any property purchased in part or wholly out of such payments,* nor to claims of the United States arising under such laws. Sections 4747 Revised Statutes, 308 World War Adjusted Compensation Act, and 22 World War Veterans' Act are repealed, and all other acts inconsistent herewith are modified hereby." (Emphasis supplied.)

Thus it was proposed that "Payments made to, or on account of a beneficiary * * * shall be exempt * * * either before or after receipt * * * so long as they remain unexpended for his benefit" and that "Such provisions shall not attach to any property purchased in part or

wholly out of such payments." Neither Section 22 of the World War Veterans' Act (Section 454, Title 38, U. S. C.) nor Section 4747 of the Revised Statutes which this section was intended to replace contained any provision that the payments should be exempt after receipt and until they were expended or that the exemption should cease when property was purchased therewith. All doubt which might have previously existed as to whether the exemption continued after the receipt of the payments was to be dispelled. It was proposed that the exemption should continue until the payments were expended for the veteran's benefit, and should definitely cease at the time that the payments were used to purchase property. As between the separate subjects of taxation and creditor's claims, no distinction was to be drawn in the termination of the exemption. But, as will be shown, the Congress declined to approve the proposal that no distinction be made.

Hearings were held by the above mentioned subcommittee and portions of a statement made by Mr. Edward E. Odom, Assistant Solicitor of the United States Veterans' Administration, at the hearing held on December 13, 1934, as shown on page 262, Part 3, Hearings, H. R. 409, 73rd Congress, are quoted below and a more complete statement of the hearing held on said date appears on pages 33 to 36 of the Appendix hereof.

> "Mr. Odom. The suggestion that the Administrator made, I believe, read this way:
>
> 'This provision shall not attach to any property purchased wholly or in part out of such payments, nor to claims of the United States arising under such laws.'
>
> "The first clause of that suggested sentence was intended to bring this section into line with the decision of the Supreme Court of the United States in the case of Trotter v. Tennessee; and, as applied to taxation, probably is correct if the intention of the Congress is

that property purchased out of the insurance and compensation payments should not be exempt from taxation. The Supreme Court has held that under the present law it is not exempt; but there is a serious question whether—for example, if a veteran, as I think was suggested by Justice Cardozo, takes his compensation and buys a barrel of flour with it or a side of meat, that that should not be exempt, the same as the money itself; or, if he invests it in bonds, that the bonds should or should not, as might be decided by the Congress, be exempt from the claims of his creditors.

"It was our understanding that this would not affect the present holding that these funds, no matter in what form they are invested, would be exempt from the claims of creditors. But there is a case pending in the Supreme Court of the State of North Carolina, and another one in the Kentucky Supreme Court, where the decision of the Supreme Court of the United States in the case of Trotter v. Tennessee is being argued as applicable to the claims of creditors; that is, that if the veteran puts his money in property, that it is no longer exempt from the claim of the creditor.

"If that is the proper effect of this language, it occurs to us that the committee might desire to give some consideration to whether they would not change that so as to make it clear that it is only on the question of taxation that the property shall not be exempt.

"In other words, it could be argued, I suppose well, that the veteran's property should be taxed the same as anybody else's. *Now, whether his property should also be free from the claims of creditors when that property is purchased with these funds, is the question that ought to be considered by the committee at this time, I think."* (Emphasis supplied.)

At the conclusion of all of the hearings, the subcommittee of the Committee on World War Veterans' Legislation recommended, page 79 of its Report submitted January 8, 1935, as follows:

"It is therefore proposed that the following section be enacted to replace section 22, World War Veterans'

Act, section 454, Title 38, United States Code, and section 4747, Revised Statutes:

"Sec. 3. Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, *either before or after receipt by the beneficiary.* Such provisions shall not attach to claims of the United States arising under such laws *nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments.* Sections 4747, Revised Statutes, and 22, World War Veterans' Act, are repealed, and all other Acts inconsistent herewith are modified accordingly. (Emphasis supplied.)

"The provisions of this section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Title III of the World War Veterans' Act of his interest in such insurance to any other member of the permitted class of beneficiaries."

It is thus to be seen that the subcommittee realized that the exemption of the thing for which the veteran might expend the "Payment of benefits" was just as necessary as an exemption of the money itself and since it was desired to give a broader scope to the exemption than the Administrator had proposed the subcommittee struck out the qualifying words "so long as they shall remain unexpended for his benefit" and following the suggestion which had been advanced at the hearings, supra, rejected the general language which had been proposed by the Administrator as to the removal of the exemption as to property purchased with the payments and specifically confined the removal of that exemption solely to the taxation of such property.

This legislation as recommended by the said subcommittee was subsequently enacted without material change by both houses of Congress and the Committee of Finance of the Senate in its report (No. 1072, S. 74th Congress) ex-

plained the changes intended by Section 3, in part, as follows:

> "(11) The next change is section 3 of the bill which proposes a new section to replace section 22 of the World War Veterans' Act, 1924, and section 4747 of the Revised Statutes. The purpose of this new section is two-fold: first, to make uniform the law with respect to exemptions granted beneficiaries, and second to clarify the language with respect to such exemptions. * * *
>
> "The two sections have also been construed differently not only by the highest appellate courts of the States, but also by the Supreme Court of the United States. For example, it has been held that 'payments due or to become due' of section 4747 Revised Statutes refer to the payments before they are made, and that the exemptions of said section do not extend to payments made to a beneficiary or to the guardian of a beneficiary. (See McIntosh v. Aubrey (185 U. S. 122, 46 L. Ed. 834).) Some State supreme courts have held that the language of section 22 should be construed similarly. (See State ex rel. Smith v. Bd. of Com. of Shawnee Co. (132 Kan. 233, 294 Pac. 915)), and although the Supreme Court of the United States denied certiorari in the case just cited it has not passed directly upon that specific question, *but has indicated that it would not follow this doctrine with respect to any exemption other than that relating to taxation.* (*See Trotter* v. *Tenn.* (*78 L. Ed. 128*) *and Pagel* v. *Pagel* (*78 L. Ed. 627*).) The language of the proposed amendatory section will, it is believed, clarify these disputed points and will place the law in conformity with the decisions of the Supreme Court on the subject. It will make the law uniform as to all beneficiaries." (Emphasis supplied.)

It is apparent from an examination of the proposed legislation as submitted by the Administrator of Veterans' Affairs, the Hearings and Reports of the Committees of Congress, and the statute as finally recommended by these committees and enacted by Congress, that the change which

was effected in the language of the proposed legislation concerning "any property purchased in part or wholly out of such payments" was considerately and purposefully made. It is also apparent that it was the intent and purpose of Congress in enacting this statute to distinguish between the right of a sovereign, on the one hand, and the claim of a creditor, on the other, and to reject the recommendation of the Administrator of Veterans' Affairs which would have subjected such property to the claims of creditors as well as for taxes, and instead to safeguard the estates of veterans derived from benefit payments, even though invested, from all claims other than those of a sovereign.

The right of a sovereign to levy and collect taxes for the public good has always been regarded as superior to that of a creditor to collect his claim, and Congress, in refusing to enact the portion of the proposed legislation which removed the exemptive provisions as "to any property purchased in part or wholly out of such payments" as far as creditors were concerned, recognized the higher obligation which it and other legislative bodies place upon a citizen to pay his tribute to a sovereign than upon him to pay his debt to a creditor and enacted such a statute as it believed was sufficient to exempt such property from the claim of a creditor and yet leave the sovereign free to collect its just due.

The Supreme Court of North Carolina had held, in *Martin* v. *County*, 201 N. C. 43, 158 S. E. 847, decided prior to the case of *Trotter* v. *Tennessee*, supra, and prior to the passage of the statute involved in this case, that property purchased out of benefit payments was not exempt from taxation because the word "payable" as used in Section 22—following the theory of the Supreme Court of Kansas in the case of *State* v. *Shawnee County Commissioners*, supra—protected the payments only before they were paid; subsequent to the enactment of Section 3, supra, it held, in *Lawrence* v. *Shaw*, 210 N. C. 352, 186 S. E. 504, that the payments when deposited in a bank by the veteran's guardian are not exempt from taxation. This Court reversed the latter case, *Law-*

rence v. *Shaw*, 300 U. S. 245, 81 L. Ed. 623, 57 S. Ct. 443, and after referring to the *Trotter case*, said:

> "Having no doubt that the moneys payable by the Government to the veteran were exempt until they came into his hands or those of his guardian, we left the question open 'Whether the exemption remained in force while they continued in those hands or on deposit in a bank.' The World War Veterans' Act, 1924, provided that the compensation and insurance allowances should be 'exempt from all taxation.' The Act of 1935 is more specific, providing that the payments shall be exempt from taxation and shall not be liable to process 'either before or after receipt by the beneficiary.' There was added the qualification that the exemption should not extend 'to any property purchased in part or wholly out of such payments.' This more detailed provision was substituted for that of the earlier Act and was expressly made applicable to payments theretofore made. We think it clear that the provision of the later Act was intended to clarify the former rather than to change its import and it was with that purpose that it was made retroactive."

It is obvious that the exemption referred to as having been qualified was the exemption as to taxation for the reason that the statute made that clear and it was the only issue in the case. Since the exemption as to taxation in the 1935 Act appears in the same clause in which the exemption as to the claims of creditors is found, but the former is qualified, whereas the latter is not, it seems to be apparent that the Court noticed this distinction in its reference to the fact that this Act was more specific. It is submitted, therefore, that the Supreme Court of North Carolina by failing to distinguish in its decision in the instant case between the right of a sovereign and the claim of a creditor, misapplied the decision of this Court in the case of *Lawrence* v. *Shaw*, supra, and erroneously construed the provisions of the statute.

POINT II

Under Well Settled Principles of Statutory Construction Section 454(a) Must Be Construed to Exempt From the Claims of Creditors Not Only the Benefits Paid but Also the Proceeds Thereof Invested in the Usual Form.

The cardinal rules of statutory construction, uniformly recognized, aid in arriving at the proper meaning of the statute. Among these are that the legislative intent must prevail, that the statute is to be read as a whole, that every part is to be given effect, that particular words out of harmony with the general purposes of the act may be given effect if by way of proviso or exception, and that the express mention of one thing implies the exclusion of another of the same class.

The application of these rules to Section 454(a), Title 38, U. S. C. (Section 3, Public No. 262, 74th Congress) results in a proper construction of the section which is in accord with its judicial and legislative history as above outlined. There is no conflict between the history of the legislation and the construction which, petitioners submit, may be found in the plain words of the statute. It has been pointed out that the Act of which this section is a part is entitled "An Act to safeguard the estates of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance, and for other purposes." The language of the section is specific: First, it provides that benefits may not be assigned before payment, second, that payments, either before or after receipt by the beneficiary, shall be exempt from taxation, claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever. Then follow two exceptions, first, certain claims of the United States, and, second, that the exemption *as to taxation* shall not extend *to property purchased* in whole or in part *out of such payments.*

Such specific language removes all doubt as to the meaning of the word "payable," and makes it clear that the exemptions apply *after* as well as *before* receipt by the beneficiary. "Beneficiary" is one, veteran or otherwise, in receipt of benefits. *Culp* v. *Webster*, 70 Pac. (2d) 273. This is in line with this Court's decision in the case of *Pagel* v. *Pagel*, supra.

Effectuating a liberal purpose, as declared in the title thereof, the exemption provisions of the statute remain unrestricted by legislative fiat except in the matter of claims of the United States and taxation. The decision of the Supreme Court of North Carolina can be sustained, if at all, therefore, only by resort to an *implied*, certainly not an express, restriction of the exemption, a view which favors creditors whose interests did not constitute the subject matter of the legislation, a view, too, which burdens the statute with an implication against its declared purpose and denies relief to the only class for whose benefit the law was enacted. An implication of this kind might be resorted to, in a proper case, to effectuate a declared purpose, or, as petitioners may do here, to sustain an exemption, but it may never be utilized, as it has been here, to frustrate the will of the Congress. Even so, if anything is to be implied, which petitioners submit may be improper and is unnecessary in this case, all that may be garnered from the accepted rules of statutory construction sustains petitioners' contention and has little or no tendency to support the decision of the Court below.

Since the statute contained ample exemption provisions there was no need for Congress to further lengthen it by providing specifically that investments made of the "Payments of benefits" should be exempt from the claims of creditors, and applying the universally accepted maxim *"Expressio unius est exclusiō alterius"* as a means of discovering the legislative intent the only logical conclusion which can be reached is that since Congress specifically excepted the exemptive provisions as to taxation it thereby

intended that investments made of the benefits should be exempt as to all claims except those for taxes.

Further, as pointed out by this Court, in *Lawrence* v. *Shaw*, supra, the intent was to clarify the language to accord with court decisions. Before the approval of the Act here involved, the weight of authority was to the effect that the exemption from taxation did not extend to investments. This Court so held. As to exemption from the claims of creditors, however, the weight of authority was that the exemption applied and protected investments and property acquired with benefit payments. This Court never decided that question. The two exemptions stood, and stand, on a different basis. The one subject to strict construction—as every citizen is expected to pay his just part of Government expense; the other to be broadly construed for the protection intended. *Pagel* v. *Pagel*, supra, *Spicer* v. *Smith*, 288 U. S. 430, 77 L. Ed. 875, 53 S. Ct. 415.

It is also a fundamental principle of statutory construction that weight is to be given to the contemporaneous construction placed upon a statute by the officers of departments charged with the duty of executing it, especially where such construction has been made by the highest officers in the executive department, and, while not generally controlling, such construction should not be disregarded or overturned except for the most cogent reasons and unless clearly erroneous. *Brewster* v. *Gage*, 280 U. S. 327, 74 L. Ed. 457, 50 S. Ct. 115.

In the recently decided case of *Armstrong Paint & Varnish Works* v. *Nu-Enamel Corp.*, 83 L. Ed. (Adv.) 183, 190, this Court said:

> "This administrative interpretation, contemporary with the legislation, and the legislative history have weight 'when choice is nicely balanced.' "

In the case of *Kern River Co.* v. *United States*, 257 U. S. 147, 154, 66 L. Ed. 175, 42 S. Ct. 60, this Court said:

"Even if the meaning were not otherwise made plain, we should be slow to reject the construction thus put on the section by the head of the Department charged with administering it. *Logan* v. *Davis,* 233 U. S. 613, 627, 58 L. Ed. 1121, 1128, 34 Sup. Ct. Rep. 685."

In this connection attention is directed to the following quoted portions of Regulations numbered 5339 and 5340 promulgated on January 27, 1936, by the Administrator of Veterans' Affairs who is charged with the duty of administering all Federal laws concerning veterans and their estates.

"GUARDIANSHIP POLICY REGARDING APPLICATION OF SECTION (3, PUBLIC NO. 262, 74th CONGRESS), TO CLAIMS OF CREDITORS AND TAXATION OF FUNDS IN THE HANDS OF GUARDIANS, CURATORS, CONSERVATORS, ETC.

"*Claims of Creditors*

"5339. (Section 3, Public No. 262, 74th Congress, applies to payments made to or on account of a beneficiary under the laws relating to veterans and exempts such payments, either before or after receipt by the beneficiary, from the claims of creditors, and provides that same shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever. *The language of the section as a whole is such that it is believed such exemption extends also to property in which the proceeds of such payments are or may be invested.* * * *) (Emphasis supplied.)

"*Taxation of Funds in Hands of Fiduciary*

"5340. (Payments made to or on account of a beneficiary under any of the laws relating to veterans are exempt from taxation. *Property purchased wholly or in part out of such payments is not exempt from taxation.* * * *)" (Emphasis supplied.)

The distinction which was thus drawn between "claims of creditors" and "taxation" is manifest and these regulations clearly show the construction which has been placed upon the exemption provision of the statute here involved by the highest officer of the executive department of the Government to which veterans and their fiduciaries turn for advice.

It is therefore submitted that by the cardinal rules of statutory construction, as well as by its judicial and legislative history, the statute is shown to apply to payments invested for the benefit of the veteran.

POINT III

Section 454(a) Being Within the Constitutional Power of the Congress, Is Controlling, and Should Be Liberally Construed to Accomplish the Intent and Purpose Thereof.

It has been uniformly held that laws creating the right to pensions must be liberally construed with the view of promoting the objects of the lawmaking body.

In the case of *Walton* v. *Cotton*, 19 How. (U. S.) 355, 358, 15 L. Ed. 658, this Court said:

> "And where the language used may be construed as to carry out a benign policy, within the reasonable intent of Congress, it should be done."

The general rule in both State and Federal Courts is that exemptions—*other than as to taxation*—are to be construed liberally so as to effectuate their beneficient purposes. *Hills* v. *Joseph*, 229 Fed. 865. In the case just cited the Circuit Court of Appeals for the Ninth Circuit, at page 869, said:

> "The rule of construction applicable to exemption statutes is the most liberal known to the law. As said in 18 Cyc., at page 1380: 'By all but universal rule the statutes which create or give the right of exemption to a debtor are held subject to the rule of liberal con-

struction. Indeed, it would be more proper to say that they are generally subject to the most liberal construction which the courts can possibly give, the courts taking the ground that, since the statutes have a beneficial object, their first duty is to see that this object is accomplished.'"

This rule of liberal construction of exemption statutes is followed in North Carolina. *Goodwin* v. *Claytor*, 137 N. C. 224, 49 S. E. 173; *Shepherd* v. *Murill*, 90 N. C. 208. That exemptions as to creditors' claims are to be liberally construed as contrasted with the strict rule as to tax exemptions, was recognized by the Supreme Court of Kansas in *State* v. *Shawnee County Commissioners*, supra, and by the Supreme Court of California in *Estate of Ferarazza*, 28 Pac. (2d) 670. Such exemptions are based upon the public policy of protecting certain individuals, or certain things, for the greater good of the whole. This is particularly true as to pensions, or bounties, workmen's compensation, and insurance. Creditors have no vested interest in such benefits, even though the recipient should pay his just part of Government expense. Nor does the fact that the judgment is for an injury arising in tort affect the applicability of a general exemption. *Oakley* v. *Lasater*, 172 N. C. 96, 89 S. E. 1063. *Dellinger* v. *Tweed*, 66 N. C. 206.

These principles are discussed, in his apt manner, by the then Chief Justice Cardozo in rendering the decision of the Court of Appeals of New York in the case of *Surace* v. *Danna*, 248 N. Y. 18, 161 N. E. 315. That case involved the exemption provided in a Workmen's Compensation Law, and the decision held that the exemption extended to the moneys received under the Act and deposited in a bank. The decision cited with approval the case of *Bank* v. *Carpenter*, 119 N. Y. 550, 23 N. E. 1108, wherein the same Court held that the claim of a judgment creditor may not be satisfied by way of execution on property purchased by a veteran out of the proceeds of his United States pension, since the New York Statute exempted United States pensions from levy,

execution, or seizure. Said the Court (161 N. E. at page 317): "The end to be served, the mischief to be averted, supply the clews and the keys by which construction must be governed."

To like effect is the decision of the Supreme Court of Mississippi in the case of *De Baum* v. *Hulett Undertaking Co.*, 169 Miss. 488, 153 So. 513, involving a similarly worded statute, Section 618, Title 38, U. S. C.

That the Congress has the constitutional power to so protect the disabled veteran by safeguarding the proceeds of his compensation and insurance payments seems undisputed. As said in the last above cited case, *De Baum* v. *Hulett*, etc., the power is derived from Section 8, Article I of the Constitution, the war or defense powers; and as pointed out by this Court in the case of *United States* v. *Hall*, 98 U. S. 343, 25 L. Ed. 180, such power has been exercised ever since the First Congress to insure that the proceeds of the pension or bounty will inure solely to the benefit of the pensioner.

Subsequent decisions of this Court are not to the contrary, but the Supreme Court of North Carolina in the instant case cites as authority for such contrary view, the language of this Court in the case of *Lawrence* v. *Shaw*, supra, which reads as follows: "In order to carry out the intent of the statute, the avails of the Government warrants or checks must be deemed exempt until they are expended or invested." It is apparent, however, that this Court was then speaking of the tax exemption only, for that was the only question before it. It may appear, aside from the statute, that the same rule should apply as to exemption from claims of creditors if the moneys have been *expended*, although not if merely invested. But suppose they, being only enough for actual subsistence, were *expended* for food and clothing.

It was never intended by this legislation that the veteran and his family should starve or freeze so that creditors could exact their claims. The Congress, it is clear, has

established a public policy to protect the veteran in the enjoyment of his pension under such circumstances. The situation is no different as to the investment of such benefits. Again, aside from the provisions of the statute, a veteran is not obliged to retain his pension or insurance money in his pocket to prevent seizure. The Court said in *Lawrence* v. *Shaw*, supra: "Congress has declared that the payments of benefits by the Government shall be exempt not only before but 'after receipt by the beneficiary.' We cannot conceive that it was the intent of Congress that the veteran should lose the benefit of this immunity, which would attach to the moneys in his hands, by depositing the government warrants or checks in bank to be collected and credited in the usual manner. These payments are intended primarily for the maintenance and support of the veteran. To that end neither he nor his guardian is obliged to keep the moneys on his person or under his roof."

It is respectfully submitted that the rule for application in the instant case is the same as that which was announced in the well reasoned opinion of the Court of Appeals of New York in the case of *Bank* v. *Carpenter*, supra.

In that case a pensioner who had a wife and family purchased a house and lot for a home, paying a portion of the purchase price out of the proceeds of a pension and giving a mortgage on the premises to secure the balance. Section 1393 of the Code of Civil Procedure (now Civil Practice Act Par. 667) of the State of New York exempted from execution a "pension * * * heretofore or hereafter granted by the United States * * * for military services" and the Court, in holding that the premises which had been purchased by the pensioner were exempt from execution by his judgment creditor, said:

> "It is quite obvious that such an exemption can produce no beneficial effect, unless it is extended beyond the letter of the act, and given life and force, according to its evident spirit and meaning. Like other statutes, the section in question must be construed according to

the meaning and intent of the law-makers, and so as to effectuate their intention, so far as the language of the act will permit it to be done. Did the legislature intend to limit the force of their exemption to a pension, so long only as it remained an obligation of the government, or consisted of cash in the hands of the pensioner; or did they also intend to protect it after it had been expended in the purchase of articles of property designed to administer to the comfort and support of such pensioner and his family? If the latter was not intended, we must ascribe to the law-makers the absurd intention of granting pensions for the purpose of satisfying claims against pensioners, and not to provide for the care and comfort of invalid or aged soldiers. If the soldier is not protected in the act of exchanging his pension for the necessaries of life, its only effect would be to enable his creditors to take it in satisfaction of their claims. No benefit is conferred if the protection is not extended beyond the possession of the money itself, for its only value consists in its purchasing power, and if the soldier is deprived of that, the pension might as well, so far as he is concerned, have remained ungranted.

"The plain purpose of the act was to promote the comfort of the soldier; to secure to him the bounty of the government, free from the claims of creditors, and to insure him and his family a safe, although modest maintenance, so long as their needs required it. * * * *Where such moneys can be clearly identified and are used in the purchase of necessary articles, or are loaned or invested for purposes of increase or safety, in such form as to secure their available use for the benefit of the pensioner in time of need, we do not doubt but that they come within the meaning of the statute;* but where they have been embarked in trade, commerce, or speculation, and become mingled with other funds so as to be incapable of identification, or separation, we do not doubt but that the pensioner loses the benefit of the statutory exemption." (Emphasis supplied.)

Such an interpretation is the only fair and reasonable construction that can be made of the legislative provisions which are now before the Court. The only way by which the

interest of a veteran can be protected is to secure to him the use of the gratuity or pension granted him. That it has been the purpose of this Government from the earliest times down to the present to secure to the beneficiary of a pension such exclusive use and benefit cannot be doubted.

The Supreme Court of North Carolina in its decision in the instant case says that a liberal construction would "lead us into chaos." With respect to the imagined chaotic results, attention is again directed to the opinion of the Court of Appeals of New York in the case of *Bank* v. *Carpenter*, supra, decided almost half a century ago, in which that Court construed the terms of the New York statute concerning the exemption of Federal pensions, without any catastrophe ensuing. Furthermore, if carrying out the legislative intent would bring about such a result, the remedy lies with the Congress. However, nothing is shown to indicate that such would be the case. Perhaps more is to be feared in this respect if the State Courts do not give effect to the Federal laws.

In view of the foregoing it is submitted that the statute involved herein should be liberally construed to effectuate its beneficient purpose and under such construction it is clear that the investments which have been made are exempt from the claims of creditors.

POINT IV

The Construction Given to the Language of Section 454(a) By the Supreme Court of North Carolina Deprives an Insane Veteran of the Protection Which This Court Has Held Is Afforded to a Competent Veteran.

It is obvious from the decision in *Lawrence* v. *Shaw*, supra, that a competent veteran who deposits his "Payments of benefits" in a bank retains thereafter the exemption from creditors' claims; indeed, also, he retains the exemption from taxation. Without in any manner conceding

that such exemption is lost upon the withdrawal of the funds, petitioners submit that a competent veteran may keep his money in the bank indefinitely and not be harassed by creditors, expending it for necessities or other personal uses as he sees fit. But, as will be shown, an incompetent veteran will have no such protection if the decision of the Supreme Court of North Carolina is approved.

It is elementary that the primary duty of a guardian is to conserve the funds entrusted to his keeping. It is equally well settled that the guardian is charged with the duty of preserving the trust funds by investing on some acceptable security, such of them as will not be required for the immediate needs of his ward. In the case of *Gary* v. *Cannon*, 38 N. C. 64, 69, the Supreme Court of North Carolina said:

> "It is the duty of a guardian to keep the ward's money at interest and on good security; and that, under the penalty of being answerable for compound interest, if he will not reasonably endeavor to make it, and for the debt, if he allows it to remain on insufficient security."

In addition to this well settled principle the guardian in the instant case was required by the law of the State of North Carolina to invest the payments made by the Government for his ward's benefit, as is evidenced by the quoted portion of the Public Laws of North Carolina, Chapter 262, Session 1933 (Michie's Code of North Carolina, Chapter 40-a, Section 2202 (13)), which appears on page 37 of the Appendix hereof, and which Act amended the provisions of the Public Laws of North Carolina, Chapter 33, Session 1929. The statute of 1929, at the time of its passage by the Legislature, was entitled "An Act regulating the Guardianship of Incompetent Veterans and of minor children of disabled or deceased veterans and the Commitment of Veterans to the United States Government Hospitals."

The Amendment of 1933 made it mandatory that a guardian invest the funds of the estate in certain securities, among

which are bonds and notes of the same character involved in the present controversy.

The purpose of the investment in bonds and notes made in this case was not to enrich but to preserve the estate derived from the benefit payments for the use of the incompetent veteran. The expenses incident to the administration of guardianship estates, including such matters as court costs, fiduciary bond premiums, guardian's commissions and attorney's fees, would, in the course of time, substantially deplete the corpus of the estate unless it was temporarily invested in interest bearing securities. Undoubtedly it was in recognition of this fact that the State of North Carolina, as a matter of public policy, required the guardian to invest the funds.

A State cannot by such a statute deprive the incompetent veteran of the protection granted by the Federal law and render his benefit payments so invested subject to the claims of creditors. As to taxation, Congress has specifically so provided, but as to the claims of creditors, it is insisted that the intention of Congress was precisely the opposite.

The broad supervisory responsibility in guardianship matters prescribed by Section 1 of said Act (Sec. 450, Title 38, U. S. C., as amended) should not be so narrowly construed as to be confined only to moneys in the hands of a fiduciary. The language of this Court in the recent case of *Hines* v. *Lowrey*, 83 L. Ed. (Adv.) 62, seems a clear recognition of a broader intent and purpose. In fact, unless it was contemplated, there could have been no valid reason for the establishment of an elaborate system whereby, under Congressional mandate, the Veterans' Administration is charged with the direct responsibility of supervising the acts and conduct of guardians in the management of veteran's estates.

A great majority of the States, including North Carolina, have recognized this direct interest of the Federal Government in the administration of incompetent veteran's estates and have enacted supplementary legislation to further it.

All of this legislation, Federal and State, could have no purpose other than the protection of these estates so that they might be used for the benefit and to supply the needs of the incompetent veterans and their dependents.

There are none of the "fruits of business enterprises" referred to by this Court in the case of *Trotter* v. *Tennessee*, supra, to be found in the instant case. The veteran's guardian here merely did what the State of North Carolina required him to do. It is conceded that the identical funds paid by the Government for the veteran's benefit are held in the form of bonds and negotiable notes. The funds so invested have at all times remained subject to the orders of the Court having jurisdiction over him. No other moneys have been commingled with this fund.

The situation here presented is that of an incompetent veteran whose guardian in accordance with the laws of the State of North Carolina has invested the payments made for his benefit by the United States Government. Had the guardian done otherwise it could have well been contended that he was derelict in his duty and subject to removal. Surely, this is not a case of one choosing "to trade in land or in merchandise, in bonds or in shares of stock." The beneficiary of the Government did not choose, indeed, he could not choose, and his guardian did only that which he was expected and compelled to do with the payments of benefits.

In the case of *Spicer* v. *Smith*, supra, this Court said:

> "The provisions for exemption, non-assignability and suspension of payments plainly imply the passage of title from the United States to the veteran. The denunciation of embezzlement by guardians is not inconsistent with that intention. These regulations, like many to be found in pension laws, disclose a purpose to safeguard to beneficiaries the appropriations and payments made for their benefit (*United States* v. *Hall*, 98 U. S. 343, 353, 25 L. Ed. 180, 183; *Westfall* v. *United States*, 274 U. S. 256, 71 L. Ed. 1036, 47 S. Ct. 629) and

evince special solicitude for the protection of veterans who by reason of mental incompetency are unable to protect themselves.'' (Emphasis supplied.)

Congress intended that payments made for the benefit of a veteran should be received by him for the sole benefit of himself and his dependents and that he should have an opportunity to disburse them for that purpose, free from the claims of creditors. The funds which were paid by the Government in this case and which are now in the hands of the veteran's guardian in the form of temporary investments, have not been disbursed for the benefit of the veteran. The purpose and intent of Congress will not have been accomplished until they are.

Even though there may have been a change in the species of the funds paid for the veteran's benefit, the protection and immunity created by Congress goes to the substance, not the form—to the thing itself, that is the funds derived from the payments even though the payments have been invested for they still remain benefits for the veteran and are held by his guardian as such. Certainly, the intent and purpose of Congress must not be thwarted and the immunity and protection which Congress has given to the ''Payments of benefits'' to veterans must not be swept aside and the veteran and his estate penalized because the guardian was faithful to his trust and changed the form and not the substance of the benefits.

Summary

(A) The United States has by statute (Sec. 454(a), Title 38, U. S. C.) exempted the investments purchased by veterans with the benefits paid to them under the provisions of the World War Veterans' Act and cognate veteran legislation from the claims of their creditors.

(B) To give the narrow construction to the language of the said statute, as decided by the Supreme Court of North Carolina, would be contrary to the judicial and legislative

history of the said statute; would be contrary to the accepted rules of statutory construction, and would deprive veterans, and other beneficiaries, of the full immunity and protection intended by Congress.

(C) To construe the said statute as did the Supreme Court of North Carolina, is to forever debar the incompetent veteran from the use of his benefits, free from the claims of creditors, as a competent veteran may use his in accord with the decision of this court, in *Lawrence* v. *Shaw*, supra, for the very reason that the incompetent's guardian *must* invest it and by that act subject it to creditor's claims. Such a result could not possibly have been intended.

(D) In construing the said statute the Supreme Court of North Carolina misapplied the decision of this Court in *Lawrence* v. *Shaw*, supra, and deprived the incompetent veteran of a right, privilege or immunity guaranteed by said Federal law.

CONCLUSION

It is respectfully submitted that, for the reasons stated, and upon the authorities cited herein, the judgment of the Supreme Court of North Carolina should be reversed with costs.

JOHN W. WOOD,
Attorney for Petitioners.

APPENDIX

Hearings Before the Sub-Committee on Hospitalization and Guardianship of Incompetent Veterans, Committee on World War Veterans' Legislation of House of Representatives, by Authority of H. Res. 409, 73rd Congress, Part 3, Pages 261 to 264, December 13, 1934.

* * * * * * * * * *

The Chairman. We have added, or, at least, we are suggesting that this proviso be added:

> "Provided, That the provision hereof relating to claims of creditors may be waived by the Administrator of Veterans' Affairs when such waiver is shown to be for the sole benefit of an incompetent or minor beneficiary. Sections 4747, Revised Statutes; 308, World War Adjusted Compensation Act, and 22, World War Veterans' Act, are repealed, and all other acts inconsistent herewith are modified hereby."

Did you make that in your recommendation, General?

General Hines. I do not recall that. Would you let Mr. Odom explain what his views are on that? I do not recall that I brought that up.

The Chairman. It is right here on the last page, Mr. Odom.

General Hines. It will probably bring some question, I imagine, from creditors, will it not?

Mr. Edward E. Odom. May I address my remarks first to the sixth line in that section, and then come to the chairman's question, because I think it has a bearing on it?

The Chairman. Very well.

Mr. Odom. The suggestion that the Administrator made, I believe, read this way:

> "This provision shall not attach to any property purchased wholly or in part out of such payments, nor to claims of the United States arising under such laws."

The first clause of that suggested sentence was intended to bring this section into line with the decision of the

Supreme Court of the United States in the case of *Trotter* v. *Tennessee*; and, as applied to taxation, probably is correct if the intention of the Congress is that property purchased out of the insurance and compensation payments should not be exempt from taxation. The Supreme Court has held that under the present law it is not exempt; but there is a serious question whether—for example, if a veteran, as I think was suggested by Justice Cardozo, takes his compensation and buys a barrel of flour with it or a side of meat, that that should not be exempt, the same as the money itself; or, if he invests it in bonds, that the bonds should or should not, as might be decided by the Congress, be exempt from the claims of his creditors.

It was our understanding that this would not affect the present holding that these funds, no matter in what form they are invested, would be exempt from the claims of creditors. But there is a case pending in the Supreme Court of the State of North Carolina, and another one in the Kentucky Supreme Court, where the decision of the Supreme Court of the United States in the case of *Trotter* v. *Tennessee* is being argued as applicable to the claims of creditors; that is, that if the veteran puts his money in property, that it is no longer exempt from the claim of the creditor.

If that is the proper effect of this language, it occurs to us that the committee might desire to give some consideration to whether they would not change that so as to make it clear that it is only on the question of taxation that the property shall not be exempt.

In other words, it could be argued, I suppose well, that the veteran's property should be taxed the same as anybody else's. Now, whether his property should also be free from the claims of creditors when that property is purchased with these funds, is the question that ought to be considered by the committee at this time, I think.

Now, coming to the question of the chairman on this proviso, that the Administrator of Veterans' Affairs should have authority to waive the exemption when it seems to be for the benefit of the veteran or the beneficiary to do so: my theory, Mr. Chairman, may be wrong, but it is my theory that the Congress of the United States, under the Constitution, has authority to say what shall be the administrative duties and the administrative responsibilities and the admin-

istrative authority of any employee or officer of the United States Government. I question very seriously whether the Congress of the United States, on a matter that is within the powers reserved by the Constitution to the States, could enact legislation which would modify the laws of the States or the procedure of the courts on a question solely within the States' jurisdiction.

It is my thought, therefore, that, while this would give the Administrator of Veterans' Affairs authority not to insist upon the court granting the exemption—and I think he has that authority now without it being in the act—that it would not and could not, by virture of the constitutional provisions, give any authority, to the court to waive that exemption. In other words, if the court has authority to waive the exemption—I am speaking now of a court having general equity powers rather than a probate court having more limited statutory jurisdiction—that authority exists by virtue of such powers and not by virtue of a Federal act.

The Chairman. I think we can agree on it. What do you think about it, Mr. Pappenfort?

Mr. Pappenfort. A Federal statute could not, of course, give an administrative official the power to waive a State law. But this proviso merely gives the Administrator power to waive such claims as he may deem equitable, insofar as objecting to those claims in court is concerned. That is all. In other words, if the Director, under this power, waived a claim, and then the court, a State court, decided to allow it, of course, the decision of the State court would prevail.

Mr. Griswold. You cannot waive the defense to a claim.

Mr. Pappenfort. Yes.

The Chairman. Do you care to make a statement, Mr. Odom?

Mr. Edward E. Odom. With one reservation, Mr. Chairman; we feel that we have a duty to the guardian as well as to the ward, always keeping in mind that the ward's interests are paramount. We feel that we should not permit a guardian, particularly if that guardian is the mother or other near relative of the beneficiary, to be placed in a position where someone might come along later on and hold that guardian liable for some failure to act, which might be this very thing, to claim an exemption under the law.

The Chairman. Just a minute. You are getting into a fundamental question, as I view it. You say you d that to protect the guardian.

Mr. Odom. To a certain extent, keeping in mind always, Mr. Chairman, that the interest and welfare of the ward are paramount.

The Chairman. It is the idea, then, of the Bureau that the primary duty is the duty to the ward?

Mr. Odom. Always, without any reservation whatsoever; and if there is the slightest degree of difference of interest between the guardian and the ward, we absolutely take care of the ward's interests.

But that does not mean, Mr. Chairman, as I see it, that we can sit by and see the mother of a beneficiary, who happens to be the guardian of the beneficiary, or any other guardian—perhaps if it is a lawyer or a trust company we should not be so solicitous about them—fail to protect themselves by failing to claim the exemption.

The Chairman. All guardians have their own lawyers.

Mr. Odom. No, sir; we act as lawyers for a great many of them.

Mr. Griswold. You do not mean to say that you act for the beneficiary and act for the guardian, two diverse interests?

Mr. Odom. In cases which are so small that it is hardly possible for the guardian to employ an attorney to make up the accounts, we do, if the guardian requests it, make up those accounts for them and file them with the Court.

General Hines. May I say a word? In other words, many of these accounts are small and many of them, custodial awards, it would be a hardship on the guardian, for example, a mother who handles the matter. But Mr. Odom is going beyond what I understood from Mr. Pappenfort. In other words, we have the right to call the attention of the court to this matter, and if the court turns us down, which they have the jurisdiction to do, I think that settles it.

The Chairman. I think we have had enough testimony on that. It is not as important as other matters and I think we will proceed on other matters.

• • • • • • •

PUBLIC LAWS OF NORTH CAROLINA
CHAPTER 262, SESSION 1933

(Michie's Code of North Carolina, Chapter 40-a, Section 2202 (13)).

Investment of funds—Every guardian shall invest the funds of the estate in any of the following securities:

(a) United States Government bonds.

(b) State of North Carolina bonds issued since the year one thousand eight hundred seventy-two.

(c) By loaning the same upon real estate securities in which the guardian has no interest, such loans not to exceed fifty per cent (50%) of the actual appraised or assessed value, whichever may be lower, and said loans when made to be evidenced by a note, or notes, or bond, or bonds, under seal of the borrower and secured by first mortgage or first deed of trust. Said guardian before making such investment on real estate mortgages shall secure a certificate of title from some reputable attorney certifying that the same is the first lien on real estate and also setting forth the tax valuation thereof for the current year: Provided, said guardian may purchase with said funds a home or farm for the sole use of said ward or his dependents upon petition and order of the clerk of the superior court, said order to be approved by the resident or presiding judge of the superior court, and provided further that copy of said petition shall be forwarded to said bureau before consideration thereof by said court.

It shall be the duty of guardians who shall have funds invested other than as provided for in this section to liquidate same within one year from the passage of this law: Provided, however, that upon the approval of the judge of the superior court, either residing in or presiding over the courts of the district, the clerk of the superior court may authorize the guardian to extend from time to time, the time for sale or collection of any such investments; that no extension shall be made to cover a period of more than one year from the time the extension is made.

The clerk of the superior court of any county in the state or any guardian who shall violate any of the provisions of this section shall be guilty of a misdemeanor, punishable by fine or imprisonment or both in the discretion of the court. (1929, c. 33, s. 14; 1933, c. 262, s. 2.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 541

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of JOHN CARRIER, INCOMPETENT VETERAN,
Petitioners,

v.

CURLEY BRYANT, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR THE RESPONDENT IN OPPOSITION

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INDEX

Subject Index

	PAGE
Brief in Opposition to Petition	1
Opinion of the Court Below	1
Questions Involved	2
Statement of the Case	2
Argument	3
I. The Supreme Court of North Carolina Was Correct in Holding That the United States Bonds and Negotiable Notes of the Petitioner Are Subject to an Execution Issued by Respondent on Respondent's Judgment Against Petitioner	3
II. Reply to the Three Propositions Set Forth in Petitioner's Brief	9
Reply to Petitioner's First Proposition	9
Reply to Petitioner's Second Proposition	13
Reply to Petitioner's Third Proposition	15
Conclusion	17
Appendix	18

Table of Cases Cited

PAGE

Lawrence v. Shaw, 300 U. S. 245, 81 L. Ed. 623 (1936) 3, 6, 7, 8, 9, 10, 15, 17

McCurry v. Peeke, 54 Ga. App. 341, 187 S. E. 854 (1938) 10

McIntosh v. Aubrey, 185 U. S. 122, 22 Sup. Ct. 561, 46 L. Ed. 834 (1901) 10

Payne v. Jordan, 36 Ga. App. 787, 138 S. E. 262 12

Pennsylvania Railroad Company v. International Coal Mining Company, 230 U. S. 184, 33 Sup. Ct. 893, 57 L. Ed. 1446 (1912) 14

Rucker v. Merck, 172 Ga. 793, 159 S. E. 501 12

State Hospital v. Bank, 207 N. C. 697, 178 S. E. 487 (1934) 10

Trotter v. Tennessee, 290 U. S. 354, 78 L. Ed. 358 (1933) 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 17

Statutes Cited

Title 38, U. S. C. A., Section 454 (World War Veterans' Act, 1924, Section 22, 43 Stat. 613) 3, 4

Title 38, U. S. C. A., Section 454(a) (August 12, 1935, c. 510, Section 3, 49 Stat. 609) 5, 6, 9, 10, 13, 15

Title 38, U. S. C., Section 54 (Revised Statutes 4747, Act of March 3, 1873) 9

Other Citations

North Carolina Constitution, Article X, Sections 1, 2 and 3 15, 16

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CURLEY BRYANT, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR THE RESPONDENT IN OPPOSITION

Opinions Below

The opinion of the Supreme Court of North Carolina (R. 8-16) is reported in 214 N. C. 174, 198 S. E. 651. The judgment of the Superior Court of Rutherford County, North Carolina (R. 5, 6, 7) is not separately reported, but is set forth in the report of the case in the Supreme Court of North Carolina (R. 9, 10), 214 N. C. 174-5. The connected case in which respondent recovered judgment against petitioner for Fifteen Hundred ($1500.00) Dollars for criminal conversation, is reported in 214 N. C. 191, 198 S. E. 619 (R. 9).

Questions Involved

ARE INVESTMENTS IN NEGOTIABLE NOTES AND IN UNITED STATES BONDS PURCHASED WITH "PAYMENTS OF BENEFITS" UNDER THE LAWS RELATING TO WORLD WAR VETERANS (38 U. S. C. A., Section 454-a) EXEMPT FROM EXECUTION ON A JUDGMENT AGAINST THE VETERAN?

Statement of the Case

At the 1938 June-July Term of the Superior Court of Rutherford County, respondent obtained judgment against petitioner and his guardian, in the amount of Fifteen Hundred ($1500.00) Dollars (R. 1, 3). (This judgment affirmed by the Supreme Court of North Carolina, 214 N. C. 191, 198 S. E. 619, 1938.) This judgment represents One Thousand Dollars actual and Five Hundred Dollars punitive damages awarded respondent on account of criminal conversation between petitioner and respondent's wife (R. 1, 3, 6).

Petitioner, a World War veteran, owns United States Government bonds in the principal amount of Eight Thousand Three Hundred and Fifty ($8,350.00) Dollars, and negotiable notes of the face value of Three Thousand Nine Hundred Ninety-seven ($3,997.00) Dollars (R. 4, 5). These are listed by petitioner's guardian as "Investments" (R. 4) and were found by the trial Court to be "Investments" (R. 6). The trial Court further found and it is undisputed, that these investments were made for petitioner by his guardian from the proceeds of moneys paid to him by the United States Government on account of his disability incurred and insurance in the World War (R. 6).

Respondent issued execution on his judgment against petitioner (R. 1, 3). Petitioner then moved for an injunction to stop respondent's seizure and sale under execution, on the ground that petitioner's bonds and notes were

not subject to seizure and sale under Section 454a of Title 38, U. S. C. A. (R. 1, 2). The Superior Court of Rutherford County held that petitioner's bonds and notes were subject to seizure and sale under execution issued upon respondent's judgment (R. 5, 7). The Supreme Court of North Carolina affirmed this decision (R. 8-16).

ARGUMENT

I

THE ONLY QUESTION PRESENTED IS WHETHER THE SUPREME COURT OF NORTH CAROLINA WAS CORRECT IN HOLDING THAT THE UNITED STATES BONDS AND NEGOTIABLE NOTES OF THE PETITIONER ARE SUBJECT TO AN EXECUTION ISSUED BY RESPONDENT ON RESPONDENT'S JUDGMENT AGAINST PETITIONER.

Respondent respectfully submits that the controlling principles of law which govern the disposition of the present case have already been laid down by this Court in two cases, that is, in the case of *Trotter* v. *Tennessee,* 290 U. S. 354, 78 Law Ed. 358 (1933), and in the case of *Lawrence* v. *Shaw,* 300 U. S. 245, 81 Law Ed. 623 (1936). Respondent further respectfully submits that the Supreme Court of North Carolina decided the present case squarely in accord with the principles of law laid down by this Court in these two cases.

Title 38, U. S. C. A., Section 454, read:

> "*Assignability and exempt status of compensation, insurance, and maintenance and support allowances.* The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claim of creditors of any person to whom an award is made under parts II, III, or IV; *and shall be exempt from all taxation.* Such compensation, in-

surance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable." (Italics ours.)

It will be noted that the above section provided: "and shall be exempt from all taxation."

In the case of *Trotter* v. *Tennessee*, 290 U. S. 354, 78 L. Ed. 358 (1933), decided under the above statute, the facts were:

A veteran in Tennessee purchased land with money received from the United States Government as compensation for his services in the World War. The State of Tennessee sought to tax this property. This Court held that when the veteran invested his money in land, the money lost its identity as money, and lost its immunity under the statute.

At page 360, Law Edition, *Mr. Justice Cardozo*, writing for the Court, says:

"The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. *McIntosh* v. *Aubrey*, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561. *We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. Cf. McIntosh* v. *Aubrey*, supra; *State ex rel. Smith* v. *Shawnee County*, 132 Kan. 233, 294 Pac. 915; *Wilson* v. *Sawyer*, 177 Ark. 492, 6 S. W. (2d) 825, and *Surace* v. *Danna*, 248 N. Y. 18, 24, 25, 161 N. E. 315. *Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings. The statute speaks of 'compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or*

in merchandise, in bonds, or in shares of stock, must pay their tribute to the State. If immunity is to be theirs, the statute conceding it must speak in clearer terms than the one before us here.

"The judgment of the Supreme Court of Tennessee disallowing the exemption has support in other courts. State v. *Wright,* 224 Ala. 357, 140 So. 584; *Martin* v. *Guilford County,* 201 N. C. 63, 158 S. E. 847, 76 A. L. R. 978. *There are decisions to the contrary, but we are unable to approve them. Rucker* v. *Merck,* 172 Ga. 793, 159 S. E. 501; *Atlanta* v. *Stokes,* 175 Ga. 201, 165 S. E. 270; *Payne* v. *Jordan,* 36 Ga. App. 787, 138 S. E. 262.

"Our ruling in Spicer v. Smith, 288 U. S. 430, 77 L. Ed. 875, 53 S. Ct. 415, 84 A. L. R. 1525, leaves no room for the contention that the exemption is enlarged by reason of payment to the guardian instead of payment to the ward.

"The judgment is affirmed." (Italics ours.)

The above section of the statute under which the case of Trotter v. Tennessee, supra, was decided, was repealed in 1935, and the following enacted in its place:

"454a. *Assignability and exempt status of payments of benefits.*

"Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments." (Aug. 12, 1935, c. 510, paragraph 3, 49 Stat. 609)." (38 U. S. C. A., Section 454a.)

It will be noted that in the statute next above cited, the moneys paid by the Government to the veteran are denominated as "payments of benefits," and the statute provides that the "payments of benefits" to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever. The last sentence provides that the exemption shall not attach to claims of the United States, nor shall the exemption as to taxation extend to any property purchased in part or wholly out of such payments. This last provision was clearly put in the statute for the purpose of clarifying the same in accordance with the decision of this Court in the case of *Trotter* v. *Tennessee*, supra.

In *Lawrence* v. *Shaw*, 300 U. S. 245, 81 L. Ed. 623 (1936), decided under the 1935 Act, upon an appeal from the Supreme Court of North Carolina, *Mr. Chief Justice Hughes*, writing for the Court, says, at page 626, L. Ed.:

> "The World War Veterans' Act, 1924, provided that the compensation and insurance allowances should be 'exempt from all taxation.' The Act of 1935 is more specific, providing that the payments shall be exempt from taxation and shall not be liable to process 'either before or after receipt by the beneficiary.' There was added the qualification that the exemption should not extend 'to any property purchased in part or wholly out of such payments.' This more detailed provision was substituted for that of the earlier Act and was expressly made applicable to payments theretofore made. *We think it clear that the provision of the later Act was intended to clarify the former rather than to change its import and it was with that purpose that it was made retroactive.*" (Italics ours.)

The language of this Court clearly shows that the Act of 1935 was passed merely for the purpose of clarifying the former Act, and in no way to change its import. The facts in the case of *Lawrence* v. *Shaw*, supra, were as follows:

A World War veteran had on deposit in North Carolina moneys which represented and in fact were the collections from warrants or checks drawn and issued by the United States Government in payment of his compensation and insurance. The County of Hertford, in North Carolina, attempted to levy a tax on the money of the veteran on deposit in the bank. This Court held that under the provisions of the Act of 1935, this tax could not be levied for the reason that the money while on deposit in the bank had not lost its character as "payments of benefits." The Court held that the "payments of benefits" were exempt under the Act of 1935, both before and after receipt by the beneficiary, as expressly provided in the Act. The Court then reasoned that the beneficiary was not bound to carry the money around in his pocket, but might deposit the same in a bank. However, the Court cited the case of *Trotter* v. *Tennessee* with approval, and indicated that it would adhere to its decision in the *Trotter* case to the effect that when "payments of benefits" are invested they lose their character as such and are subject to taxation.

In the *Lawrence case*, the Court says, at page 626, L. Ed. (Vol. 81):

> "In *Trotter* v. *Tennessee*, 290 U. S. 354, 78 L. Ed. 358, 54 Supreme Ct., 138, supra, we considered the provisions of paragraph 22 of the World War Veterans' Act, 1924, in relation to investments by the guardian of an incompetent veteran of the moneys received from the Government for compensation and insurance. We held that land purchased by the guardian with such moneys was not exempt. We said: 'The statute speaks of "compensation, insurance, and maintenance and support allowance payable" to the veteran, and declared that these shall be exempt. *We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the State.*' "

The Court continues, on page 627, L. Ed.:

> *"The provision of the Act of 1935 that the exemption should not apply to property purchased out of moneys received from the Government shows the intent to deny exemption to investments, as was ruled in the* Trotter *case. It is of course true that deposits in bank may be made under special agreement by which the deposits assume the character of investments and would lose immunity accordingly. No such agreement is shown here. Nor are the bank balances shown to be the proceeds of investments. They are stipulated to be 'uninvested balances' of the government payments.* . . . We hold that the immunity from taxation does attach to bank credits of the veteran or his guardian which *do not represent or flow from his investments but result from the deposit of the warrants or checks received from the Government when such deposits are made in the ordinary manner so that the proceeds of the collection are subject to draft upon demand for the veteran's use.* In order to carry out the intent of the statute, the avails of the government warrants or checks *must be deemed exempt until they are expended or invested.*
>
> "The answer by the state court is broad enough to cover bank deposits of that sort and we consider the ruling in that application to be contrary to the federal statute." (Italics ours.)

We respectfully submit that it is clear from the holding of this Court in the case of *Trotter* v. *Tennessee*, supra, and in the case of *Lawrence* v. *Shaw*, supra, that the Court intended to lay down the rule that investments of a World War veteran are subject to taxation and to the claims of veteran's creditors. Further, that the Court in these two cases draws a clear line of demarcation between "payments of benefits" (money paid by the United States Government to the veteran) on the one hand, and permanent investments and fruits of a business enterprise on the other. These two cases hold the "payments of benefits" exempt from taxation and from claims of creditors both before and after

receipt by the veteran; they deny exemption from taxation or from claims of creditors to permanent investments or the fruits of business enterprises.

Petitioner asks the Court to hold that his permanent investments are subject to taxation but exempt from the claims of his creditors. No such classification or distinction is made in the Act itself or in the cases of *Trotter* v. *Tennessee* and *Lawrence* v. *Shaw,* supra. It is respectfully submitted that when the Supreme Court of North Carolina held in the present case that petitioner's bonds and notes were subject to execution, it correctly applied the principles set forth in the *Trotter case* and in the *Lawrence case* to the facts in the instant case.

II

PETITIONER IN HIS BRIEF ADVANCES THREE DISTINCT ARGUMENTS TO SUSTAIN HIS POSITION THAT HIS PERMANENT INVESTMENTS OF BONDS AND NOTES ARE NOT SUBJECT TO SALE UNDER EXECUTION TO ENFORCE PAYMENT OF RESPONDENT'S JUDGMENT (Petitioner's Brief, p. 9).

Petitioner's First Point

Petitioner's first point is that the judicial and legislative history of Section 454a clearly shows that it was the intent and purpose of Congress to exempt permanent investments from claims of creditors. We respectfully submit that just the opposite is true. R. S. 4747 read:

> "54. Attachment, levy, or seizure of moneys due pensioners prohibited. No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner."

This statute was construed in *McIntosh* v. *Aubrey*, 185 U. S. 122, 22 Sup. Ct. 561, 46 L. Ed. 834 (1901). The Court held that under this section the permanent investments or property of veterans were not exempt from the claims of his creditors.

Section 454, Title 38, U. S. C. A., was construed by this Court in the case of *Trotter* v. *Tennessee*, supra, and was construed by the Supreme Court of North Carolina in the case of *State Hospital* v. *Bank*, 207 N. C. 697, 178 S. E. 487 (1934). This case held that permanent investments of the veteran were not exempt from claims of creditors. This Court denied certiorari. 295 U. S. 761, 55 Sup. Ct. 921, 79 L. Ed. 1704.

The Act of 1935, Title 38, U. S. C. A., Section 454a, was construed by this Court in the case of *Lawrence* v. *Shaw*, supra, which decision we have hereinabove reviewed, and has been construed in the case of *McCurry* v. *Peeke*, 54 Ga. App. 341, 187 S. E. 854 (1938). In the McCurry case, the question involved was identical with the question involved in the present case. The Georgia Court states the question thus:

> "The question for determination in this case is whether land purchased with the 'payments of benefits' under the laws relating to World War Veterans, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure, by or under any legal or equitable process whatever."

The Georgia Court held that when the veteran in question invested his "payments of benefits" in land or other property, that the property so purchased was subject to the claims of the veteran's creditors and could be sold under execution. This case, as persuasive authority, is directly in point. We quote from the Georgia Court, page 855, S. E., as follows:

> "(1, 2.) Section 3 of the act of August 12, 1935, which repealed the above Section 4747, applies to 'pay-

ments of benefits' due and to become due, such as payments of compensation, adjusted compensation, pensions, emergency officers' retirement pay, or insurance under any act administered by the veteran's administration, etc., and makes these payments immune from levy or seizure by any legal or equitable process, not only before (as stated in repealed Section 4747), but also after receipt. The act of 1935 speaks of 'payments of benefits' to veterans and declares they shall be exempt before or after receipt by the beneficiary. What is exempt under this last act? The 'payment of benefits,' and in this case the 'payment of benefits,' was made in money, and the money even after its receipt by the beneficiary was exempt and the beneficiary might have used the money in any manner, for his own benefit and to secure the comfort of his family, free from attacks of creditors. But when the beneficiary uses this money to buy real estate, the money paid as a benefit under the World War Veterans' Act (43 Stat. 607, as amended, 38 U. S. C. A., paragraph 421, et seq.), loses its quality and identity, and is transmuted into real estate, and there is an end to the exemption. Should the veteran choose to trade in land, he does so at his own risk, and his land is liable to levy in like manner as the lands of other persons. The mere fact that the real estate was purchased with the 'benefit payments' received by the war veteran would not exempt the real estate from levy under an execution. In the first sentence of Section 3 of the acts of 1935, there is an exemption from taxation, and an exemption from the claims of creditors, and there is a statement that the payment of benefits 'shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.' There is no such exemption upon any other property even though the property be purchased out of the 'payment of benefits.' It was therefore necessary to provide further in the next sentence of the 1935 act, that the exemption therein contained 'shall not as to taxation extend to any other property purchased in part or wholly out of said payments. This last provision must have been incorporated therein as a matter of precaution to make matters doubly sure

that such property purchased with 'benefit payments' was subject to taxation.

"In writing the second sentence of the third section of the act of 1935, the framers of the act seem to have had in mind only the relationship of the government or governments to the 'benefit payment,' and were not attempting to deal with any other claims; and a failure to mention other claims does not signify anything with reference to them. Under Section 3 of the act of Congress approved August 12, 1935, the World War veteran's real estate was not exempt from levy, notwithstanding the real estate was purchased with 'benefit payments' received from the United States.

"Judgment affirmed."

Hence, it is apparent that all three of the acts relating to this subject have been construed, and have been construed just as respondent contends the present Act should be construed in this case. That is, to the effect that permanent investments and property of a World War veteran are subject to execution and sale at the instance of his creditors.

Petitioner, on page 11 of his brief, cites the following cases among others: *Payne* v. *Jordan*, 36 Ga. App. 787, 138 S. E. 262; *Rucker* v. *Merck*, 172 Ga. 793, 159 S. E. 501. It is well to note that these two cases in particular, and therefore other cases of like import, were expressly disapproved by this Court in the case of *Trotter* v. *Tennessee*, 290 U. S. 354, 78 L. Ed. 358 (1933), the exact language of the Court being as follows:

"The judgment of the Supreme Court of Tennessee disallowing the exemption has support in other courts. State v. *Wright*, 224 Ala. 357, 140 So. 584; *Martin* v. *Guilford County*, 201 N. C. 63, 158 S. E. 847, 76 A. L. R. 978. *There are decisions to the contrary, but we are unable to approve them. Rucker* v. *Merck*, 172 Ga. 793, 159 S. E. 501; *Atlanta* v. *Stokes*, 175 Ga. 201, 165 S. E. 270; *Payne* v. *Jordan*, 36 Ga. App. 787, 138 S. E. 262."

It is respectfully submitted that the history of the enactment of Section 454a, Title 38, U. S. C. A., clearly indicates that permanent investments or fruits of business enterprises are not exempt from execution on claims of creditors of the veteran.

Petitioner's Second Point

Petitioner's second point is that under the well-settled principles of statutory construction, the logical construction of Section 454a is that it exempts not only the benefits paid but also the proceeds thereof invested in the usual form from the claims of creditors and attachment. Here again, we respectfully submit that the proper construction shows just the contrary.

Where the language of the statute is plain and unambiguous, there is no room for construction, and it is the duty of the Court to enforce the statute as it is written. It is only when the language of the statute is doubtful or subject to two or more conflicting interpretations that the Court may undertake to interpret or construe it. We respectfully submit that there is no such ambiguity of terms in the statute involved in the present case. The statute purports to deal with "assignability and exempt status of payments of benefits." The first sentence of the statute reads as follows: "Payments of benefits due or to become due, shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." This first sentence grants the exemption, and if read by itself, it is quite apparent that the exemption referred to applies only to "payments of benefits." No mention is made of anything being exempt in this first sentence except "payments of benefits." Nothing in this sentence attempts

to deal with property or investments of the veteran. This sentence certainly does not exempt or even mention any property acquired by the veteran whether purchased out of "payments or benefits" or whether obtained by other means. This sentence exempts nothing but "payments of benefits." The second sentence clearly refers to the first sentence and attempts to state wherein the exemptions granted in the first sentence shall not apply. This sentence reads as follows: "Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments." It is quite obvious that the last clause of this sentence with reference to taxation was put in only as an additional safeguard for the purpose of being sure that the statute complied with the rule laid down by this Court in the case of *Trotter* v. *Tennessee*, supra. Nowhere in this statute is anything said about property, investments, or anything except "payments of benefits" being exempt from the claims of creditors. To construe the statute as contended by petitioner, this Court would have to read into the statute an additional sentence or clause to the effect that all property and all permanent investments of a veteran purchased with funds arising from "payments of benefits" shall be exempt from the claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever. We respectfully submit that no such clause or language appears in the statute; that the language of the statute is clear; that this being so, there is no room for interpretation or construction, or going back of the plain words of the statute to delve into the legislative intent as expressed by members of a subcommittee or by any report of the subcommittee. *Penna. Railroad Company* v. *International Coal Mining Company*, 230 U. S. 184, 33 Sup. Ct. 893, 57 L. Ed. 1446 (1912).

We respectfully submit that the proper rule of statutory construction clearly shows that the Supreme Court of North

Carolina was entirely correct in holding that under the statute in question—38 U. S. C. A., Section 454a—the bonds and notes of the petitioner are subject to sale under execution at the instance of respondent.

Petitioner's Third Point

Petitioner's third point is that the statute being within the constitutional power of the Congress is controlling, and should be liberally construed to accomplish the intent and purpose thereof.

Respondent quite agrees that the statute is controlling. However, the disagreement arises with reference to what the intent and purpose of the statute was. Respondent respectfully submits that the statute intended to exempt "payments of benefits" and "payments of benefits" alone, and does not deal with and did not intend to deal with permanent investments purchased by a veteran out of moneys paid him by the United States Government. Petitioner argues that it is the purpose of the act to protect the veteran from the claims of his creditors and attempts to draw a distinction between moneys expended and moneys invested. Petitioner's brief on page 25 thereof, refers to moneys actually expended for food and clothing and asks, "Should the veteran and his family starve or freeze or be made objects of charity because creditors exact their due?" Petitioner then argues that the Congress has established a public policy to protect the veteran in his enjoyment of his pension under such circumstances. Petitioner has overlooked the fact entirely that under the decision of this Court in the case of *Trotter* v. *Tennessee*, supra, and in the case of *Lawrence* v. *Shaw*, supra, a disabled veteran may keep all of the money paid him by the Government in the bank subject to his draft at any time for such things as he and his family may need, and that while in the bank they are not subject to taxation or to the claims of creditors.

Article 10, Sections 1, 2 and 3 of the Constitution of North Carolina (set out in full in the Appendix hereto) provide

that every resident of the State shall have a Five Hundred ($500.00) Dollar personal property exemption and One Thousand ($1,000.00) Dollars homestead (real property) exemption. The veteran would have the same exemption here as any other citizen in the State, and his side of meat about which petitioner seems so concerned and the other necessities of life would be protected from levy under execution by the homestead and personal property exemptions provided for the North Carolina Constitution, and the laws passed pursuant thereto. However, there is considerable difference between the case supposed by petitioner of a purchase by the veteran of the necessities of life, and a permanent investment made by the veteran or a business enterprise embarked upon by the veteran. In the first instance, the veteran is spending his money to supply himself with the necessary things of life, that is, food, clothing and shelter. In the second, he is investing the surplus for the purpose of making a profit, whether the same be interest, common stock dividends, or any other profit which may accrue to him from any form of investment he might make. The very term "investments" indicates that the veteran has a surplus over and above that needed for food and clothing and for the necessities of life. Otherwise, there would be nothing to invest. It is submitted that there is no good reason why this surplus should be exempt from execution and from the just claims of the veteran's creditors. Surely the just debts of the veteran should stand, in the eyes of the law, as nearly as possible on an equal footing with the just debts of every other person.

Conclusion

It is respectfully submitted that the principles of law which govern the present case have been laid down and settled by this Court in the case of *Trotter* v. *Tennessee*, supra, and in the case of *Lawrence* v. *Shaw*, supra.

It is further respectfully submitted that the Court below decided the present case in accordance with the principle laid down in these two cases; that the judgment of the lower Court is entirely correct, and that a review of the case by this Court is not necessary. Respondent, therefore, respectfully requests that the Writ of Certiorari be not granted.

FREDERICK D. HAMBRICK,
Attorney for Respondent.

Of Counsel:
FREDERICK D. HAMBRICK, JR.

APPENDIX

North Carolina Constitution

ARTICLE X

Homesteads and Exemptions

Section 1. *Exemptions of personal property.* The personal property of any resident of this State, to the value of five hundred dollars, to be selected by such resident, shall be and is hereby exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Section 2. *Homestead.* Every homestead, and the dwellings and buildings used therewith, not exceeding in value one thousand dollars, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city, town, or village with the dwelling and buildings used thereon, owned and occupied by any resident of this State, and not exceeding the value of one thousand dollars, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes or for payment of obligations contracted for the purchase of said premises.

Section 3. *Homestead exemption from debt.* The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of his children, or any of them.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 541

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier, Incompetent Veteran,
Petitioners,

v.

CURLEY BRYANT,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

RESPONDENT'S BRIEF

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INDEX

	PAGE
Opinions Below	1
Statement of Case	2
Question Presented	2
Argument	3
Summary of Argument	3
Point I	4
Point II	8
Point III	12
Point IV	14
Point V	22
Conclusion	28
Appendix	29

Table of Cases Cited

PAGE

Adams v. Thomas, 81 N. C. 296 (1879) 25, 26
Blake v. Respass, 77 N. C. 183 (1877) 26
Bank of Columbia v. Oakley, 4 Wheat. 235, 4 L. Ed. 559 (1819) 21
Brunswick v. National Bank, 192 U. S. 386, 24 S. Ct. 315, 48 L. Ed. 491 (1903) 21
Caminneti v. U. S., 242 U. S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1916) 14
Ford v. U. S., 273 U. S. 593, 47 Sup. Ct. 531, 71 L. Ed. 793, 801 (1926) 7
Lemley v. Ellis, 146 N. C. 221, 59 S. E. 683 (1907) 24
Lawrence v. Shaw, 300 U. S. 245, 81 L. Ed. 623 ..... 3, 11, 12, 28
McIntosh v. Aubrey, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561 (1901) 15, 16, 17, 19, 20
McCurry v. Peeke, 54 Ga. App. 341, 187 S. E. 854 (1938) 6
Payne v. Jordon, 36 Ga. App. 787, 138 S. E. 262 ..... 10, 16, 17
Read v. Turner, 200 N. C. 773, 158 S. E. 475 (1931) 26
Reynolds v. Reynolds, 208 N. C. 254, 265, 180 S. E. 80 (1935) 26
Standard Fashion Co. v. Magrane-Houston Co., 258 U. S. 346, 42 S. Ct. 360, 66 L. Ed. 653, 657 (1921) 14
State Hospital v. Bank, 207 N. C. 697, 178 S. E. 487 (1934), (Certiorari Denied 295 U. S. 761, 79 L. Ed. 1704, 55 S. Ct. 921) 16
Texas & P. R. Co. v. Abilene Cotton Oil Company, 204 U. S. 426, 27 Sup. Ct. 350, 51 L. Ed. 553 (1906) 22
Trotter v. Tennessee, 290 U. S. 354, 78 L. Ed. 358 ..... 3, 8, 9, 10, 11, 12, 16, 17, 19, 20
U. S. v. Shreveport Grain & Elevator Co., 287 U. S. 77, 53 Sup. Ct. 42, 77 L. Ed. 175, 178-9 (1932) 5, 13
U. S. v. Mo. & P. R. Co., 278 U. S. 269, 49 S. Ct. 133, 73 L. Ed. 322 (1928) 12
Van Camp & Sons v. American Can Co., 278 U. S. 245, 49 S. Ct. 112, 73 L. Ed. 311 (1928) 14

Statutes Cited

PAGE

Code of North Carolina (Michie's), Chp. 40-a, Section 2202(13), Chapter 33, Public Laws North Carolina 1929, Sec. 14, 1933, C. 262, S. 2, also S. 21 ..... 22, 23, 26

Constitution of North Carolina, Article 10, Sections 1, 2 and 3 28

Title 38, U. S. C. A. 54, R. S., 4747, Act of March 3, 1873, C. 234, Par. 33, 17 Stat. 576 ..... 15, 17, 20

Title 38 U. S. C. A. 421, Act of June 7, 1924, C. 230, Par. 1, 43 Stat. 607 16

Title 38 U. S. C. A. 454, Act of June 7, 1924, Ch. 320, Paragraph 22, 43 Stat. 613 ..... 8, 9, 16, 17, 18

Title 38 U. S. C. A. 454(a), Pub. No. 262, 74th Congress, Secs. 3 and 5, Act of August 12, 1935, 49 Stat. 607, Ch. 510, Par 3 ..... 3, 4, 5, 6, 11, 14, 15, 21, 22

Other Citations

Hearings Before Committee on World War Veterans' Legislation and Sub-Committee on Hospitals, H. R. 409, 73rd Cong., Part 1, Page 18 18

Report of Sub-Committee on World War Veterans' Legislation of the House of Representatives, H. R. 409, 73rd Cong., Pages 75, 78, 79 (Submitted January 8, 1935) 17, 18

Report of Sub-Committee of the Committee on World War Veterans' Legislation of the House of Representatives Under H. R. 409, 73rd Cong., Page 63 ..... 18, 19

Report of Finance Committee of the Senate, No. 1072 S, 74th Cong., Pages 6, 7 19

Report of Committee on World War Veterans' Legislation and Sub-Committee on Hospitals, H. R. 409, 73rd Cong., Part 1, Pages 3, 4, May 31, June 1, 4, 5, 6, 7 and 9, 1934 23

In The

Supreme Court of the United States

October Term, 1938

No. 541

John Carrier and J. Harvey Carpenter, Guardian of John Carrier, Incompetent Veteran,
Petitioners,

v.

Curley Bryant,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

RESPONDENT'S BRIEF

OPINIONS BELOW.

The opinion of the Supreme Court of North Carolina (R. 8-16) is reported in 214 N. C. 174, 198 S. E. 651. The judgment of the Superior Court of Rutherford County, North Carolina (R. 5, 6, 7), is not separately reported, but is set forth in the report of the case in the Supreme Court of North Carolina (R. 9, 10), 214 N. C. 174-5. The connected case in which respondent recovered judgment against petitioner for Fifteen Hundred ($1,500.00) Dollars for criminal conversation, is reported in 214 N. C. 191, 198 S. E. 619 (R. 9).

STATEMENT OF THE CASE.

At the 1938 June-July Term of the Superior Court of Rutherford County, respondent obtained judgment against petitioner and his guardian, in the amount of Fifteen Hundred ($1,500.00) Dollars (R. 1, 3). (This judgment affirmed by the Supreme Court of North Carolina, 214 N. C., 191, 198 S. E., 619, 1938.)

Petitioner, a World War veteran, owns United States Government bonds in the principal amount of Eight Thousand Three Hundred and Fifty ($8,350.00) Dollars, and negotiable notes of the face value of Three Thousand Nine Hundred Ninety-Seven ($3,997.00) Dollars (R. 4, 5). These are listed by petitioner's guardian as "Investments" (R. 4) and were found by the trial court to be "investments" (R. 6). The trial court further found and it is undisputed, that these investments were made for petitioner by his guardian from the proceeds of moneys paid to him by the United States Government on account of his disability incurred and insurance in the World War (R. 6).

Respondent issued execution on his judgment against petitioner (R. 1, 3). Petitioner then moved for an injunction to stop respondent's seizure and sale under execution, on the ground that petitioner's bonds and notes were not subject to seizure and sale under Section 454a of Title 38, U. S. C. A. (R. 1, 2). The Superior Court of Rutherford County held that petitioner's bonds and notes were subject to seizure and sale under execution issued upon respondent's judgment (R. 5, 7). The Supreme Court of North Carolina affirmed this decision (R. 8-16).

QUESTION PRESENTED.

ARE INVESTMENTS OF A WORLD WAR VETERAN IN UNITED STATES BONDS AND NEGOTIABLE NOTES, PURCHASED WHOLLY OUT OF MONEYS PAID TO THE VETERAN BY THE UNITED STATES,

EXEMPT FROM AN EXECUTION ISSUED AT THE INSTANCE OF A JUDGMENT CREDITOR OF THE VETERAN, BY REASON OF THE PROVISIONS OF SECTION 454(a), TITLE 38, U. S. C., and SEC. 5, PUBLIC NO. 262, 74TH CONGRESS?

ARGUMENT.

Respondent rests his case for a negative answer to the above question on the following five propositions:

I. Under the plain terms of the statute (38 U. S. C. A. 454(a)) no exemption from the claims of creditors is granted to "investments" of the veteran.

II. Under the rules laid down by this court in *Trotter* v. *Tennessee,* 290 U. S. 354, and *Lawrence* v. *Shaw,* 300 U. S. 245, the investments of a World War veteran are not exempt from an execution issued at the instance of a judgment creditor of the veteran.

III. The language of the statute (38 U. S. C. A. 454(a)) is plain. There is, therefore, no room for resort to reports of legislative committees, or other extrinsic aids for the purpose of construing this Act.

IV. If the court is of the opinion that it is proper to resort to extrinsic aids, that is, to the judicial and legislative history of the statute, and to the canons of statutory construction, these support respondent's position that the investments of petitioner are subject to an execution issued on respondent's judgment.

V. "Payments of benefits" or moneys paid the veteran by the United States Government are all that the statute (38 U. S. C. A. 454(a)) intends to exempt and protect. These are amply protected both as to competent and incompetent veterans, by the decisions of this court and by laws of the State of North Carolina.

POINT I.

Under the Plain Terms of the Statute (38 U. S. C. A. 454(a)), No Exemption From the Claims of Creditors Is Granted to "Investments" of the Veteran.

The statute in question, 38 U. S. C. A. 454(a), Public No. 262, 74th Congress, Sec. 3, Act of August 12, 1935, 49 Stat. 607, and Public No. 262, 74th Congress, Sec. 5, 49 Stat., 607, reads:

> "*Payments of benefits* due or to become due shall not be assignable, and such *payments* made to, or on account of, a beneficiary *under any of the laws* relating to veterans, shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not *attach* to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation *extend* to any property purchased in part or wholly out of such payments. Section 4747 of the Revised Statutes and Section 22 of the World War Veterans' Act, 1924, are hereby repealed, and all other Acts inconsistent herewith are hereby modified accordingly. The provisions of this section shall not be construed to prohibit the assignment by any person, to whom converted insurance shall be payable under Title III of the World War Veterans' Act, 1924, of his interest in such insurance to any other member of the permitted class of beneficiaries." (Emphasis supplied.)

Section 5, Public No. 262, 74th Congress.

> "That this Act shall take effect and be in force from and after its passage, but the provisions hereof shall apply to payments made heretofore under any of the Acts mentioned herein."

It will be noted that the exemption is granted in the first sentence of the statute which reads:

> "*Payments of benefits* due or to become due shall not be assignable, and such *payments* made to or on account of, a beneficiary under any of the laws relating to veterans, shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." (Italics supplied.)

Under the plain language of the statute what is exempt? The words of the statutes answer "payments of benefits." If the language of the statute be clear it is conclusive. There can be no construction where there is nothing to construe. *U. S.* v. *Shreveport Grain & Elevator Company*, 287 U. S., 77, 53 Sup. Ct. 42, 77 Law Ed. 175, 178-9 (1932). What do the words "payments of benefits" mean? Obviously moneys paid to the veteran by the United States Government. "Payments of benefits" certainly do not include "investments." Neither do "payments of benefits" include business enterprises, embarked upon by the veteran, or property purchased by the veteran with the "payments of benefits." Hence it is clear that this first sentence does not exempt from execution investments, business enterprises, property purchased by veterans out of the "payments of benefits" or anything other than the "payments of benefits" themselves, which are exempt both before and after receipt by the beneficiary.

The next sentence of the statute reads:

> "Such provision shall not *attach* to the claims of the United States arising under such laws nor shall the exemption herein contained as to taxation *extend* to any property purchased in part or wholly out of such payments." (Italics supplied.)

The first clause of this second sentence excepts from the exemption granted in the first sentence "claims of the United States." Hence, "payments of benefits" either before or after receipt by the beneficiary are subject to the

claims of the United States. However, the first sentence did not exempt investments or property purchased with "payments of benefits" from the claims of creditors or from taxation. Hence the last clause of the second sentence "nor shall the exemption herein contained as to taxation, *extend* to any property purchased in part or wholly out of such payments" was not absolutely necessary. That Congress recognized this is clear from the terms of the statute. The statute says the exemption shall not *"attach"* to claims of the United States, and that it shall not *"extend"* as to taxation, to property purchased in part or wholly out of such payments.

A case directly in point as persuasive authority is *McCurry* v. *Peek*, 54 Ga. App. 341, 187 S. E. 854 (1938). The question involved in that case was whether land purchased with "payments of benefits" was exempt from seizure and sale at the instance of a creditor of the veteran, by virtue of the provisions of 38 U. S. C. A. 454(a), the same statute involved in the present case. The court held that the lands were not exempt from execution. At page 855, the court says:

> "What is exempt under this last Act. The 'payment of benefits,' and in this case the 'payment of benefits' was made in money, and the money even after its receipt by the beneficiary was exempt and the beneficiary might have used the money in any manner, for his own benefit, and to secure the comfort of his family, free from attacks of creditors. But when the beneficiary uses this money to buy real estate, the money paid as a benefit under the World War Veterans' Act (43 Stat. 607, as amended, 38 U. S. C. A., paragraph 421, et seq), loses its quality and identity, and is transmuted into real estate and there is an end to the exemption . . . In the first sentence of Section 3 of the Acts of 1935, there is an exemption from taxation, and an exemption from the claims of creditors, and there is a statement that the 'payment of benefits' 'shall not be liable to attachment, levy, or seizure by or under any legal or equi-

table process whatever, either before or after receipt by the beneficiary.' *There is no such exemption upon any other property, even though the property be purchased out of the 'payments of benefits.' It was therefore unnecessary to provide further in the next sentence of the 1935 Act, that the exemption therein contained shall not as to taxation extend to any other property purchased in part or wholly out of said payments. This last provision must have been incorporated therein as a matter of precaution to make matters doubly sure that such property purchased with 'benefit payments' was subject to taxation. In writing the second sentence of the 3rd section of the Act of 1935, the framers of the Act seem to have had in mind only the relationship of the government or governments to the 'benefit payments,' and were not attempting to deal with any other claims; and a failure to mention other claims does not signify anything with reference to them.*"

It is apparent that the first sentence of the statute exempts "payments of benefits" alone, and does not exempt investments, business enterprises, or property purchased in part or wholly out of "payments of benefits." No mention is made in this first sentence of anything but "payments of benefits." Since investments, business enterprises, and property purchased out of "payments of benefits" are not exempt from the claims of creditors or from taxation in the first sentence, no intention to include them in the exemption can be implied from the statement in the last clause of the second sentence to the effect that the exemption as to taxation shall not *extend* to property purchased with "payments of benefits." Thus it is seen that the maxim *expressio unis est exclusio alterius* can have no application to the present statute. With reference to this maxim this court, in *Ford* v. *United States*, 273 U. S. 593, 47 Sup. Ct. 531, 71 Law Ed. 793, 801 (1926), says:

"This maxim properly applies only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong con-

trast to that which is omitted that the contrast enforces the affirmative inference that that which is omitted must be intended to have opposite and contrary treatment."

It is to be observed that in the first sentence of the statute no exemption has been granted to investments, business enterprises, or to property purchased in part or wholly out of "payments of benefit." These are not mentioned in the first sentence. Neither are they mentioned in the second sentence. Certainly no inference can be drawn from the fact that they were omitted from the second sentence to the effect that they were intended to be included in the first sentence. There is no contrast, the maxim *exclusio unis* can have no application.

It is submitted that under the terms of the statute no exemption is granted to investments. That the words of the statute are clear, that nowhere in the language of the statute can be found an exemption of the investments of the veteran from an execution issued at the instance of his creditors.

POINT II.

Under the Rules Laid Down by This Court in the Case of Trotter v. Tennessee, 290 U. S. 354, 78 L. Ed. 358 (1933), and Lawrence v. Shaw, 300 U. S. 245, 81 L. Ed. 623 (1936), the Investments of a World War Veteran Are Not Exempt From Execution Issued at the Instance of the Judgment Creditor of the Veteran.

The statute construed in the case of *Trotter* v. *Tennessee*, *supra*, (38 U. S. C. A. 454, Act of June 7, 1924, Chap. 320, Parag. 22, 43 Stat. 613), read as follows:

> "*Assignability and exempt status of compensation, insurance, and maintenance and support allowances.* The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV,

respectively, shall not be assignable; shall not be subject to the claim of creditors of any person to whom an award is made under Parts II, III, or IV; *and shall be exempt from all taxation.* Such compensation, insurance and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable." (Italics ours.)

In *Trotter* v. *Tennessee* the facts were: A veteran in Tennessee purchased land with money received from the United States Government as compensation for his services in the World War. The State of Tennessee sought to tax this property. This court held that when the veteran converted his money into land the exemption came to an end and the land was subject to taxation. At 78 Law Ed., page 360, the court says:

"The moneys payable to this soldier were unquestionably exempt until they came into his hands or the hands of his guardian . . . We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank . . . Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys, and were converted into land and buildings. The statute speaks of 'compensation, insurance, and maintenance and support allowance' payable to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises . . .

"The judgment of the Supreme Court of Tennessee disallowing the exemption has support in other courts. . . . There are decisions to the contrary, but we are unable to approve them. *Rucker* v. *Merck,* 172 Ga. 793, 159 S. E. 501; *Atlanta* v *Stokes,* 175 Ga. 201, 165 S. E. 270; *Payne* v. *Jordon,* 36 Ga. App. 787, 138 S. E. 262.

"Our ruling in *Spicer* v. *Smith*, 288 U. S. 430, 77 L. Ed. 875, 53 Sup. Ct. 415, 84 A. L. R. 1525, leaves no room for the contention that the exemption is enlarged by reason of payment to the guardian instead of payment to the ward."

The statute construed in *Trotter* v. *Tennessee, supra* (38 U. S. C. A. 454), provided that "compensation, insurance, and maintenance and support allowance payable, . . . shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made . . . ; shall be exempt from all taxation." Certainly the exemption from taxation was in no stronger language than the exemption from claims of creditors. It is submitted that the court held in *Trotter* v. *Tennessee, supra,* that when money was converted into land the exemption came to an end, that when the exemption came to an end it must necessarily follow that it came to an end for all purposes. In other words, that under the terms of the statute the money was exempt both from taxation and from the claims of creditors; but when the money was invested in land it no longer came within the terms of the statute and could no longer be exempt either from taxation or from the claims of creditors. It is submitted that there is no sound basis either from the words of the statute or from the decision of the court upon which to predicate a distinction between an exemption of the land from taxation and an exemption of the land from the claims of creditors. That this court intended to make no such distinction is further conclusively shown by the fact that one of the cases expressly disapproved by the court in *Trotter* v. *Tennessee, supra,* that is, the case of *Payne* v. *Jordon*, 36 Ga. App. 787, 138 S. E. 262, was a case in which the Georgia court held that a house and lot purchased by a veteran with moneys received from the United States Government could not be sold under execution at the instance of a judgment creditor of the veteran.

Lawrence v. *Shaw, supra,* was decided under the 1935 Act, (38 U. S. C. A. 454(a)). In this case the county of Hertford in North Carolina, attempted to levy a tax on money of a World War veteran on deposit in a bank. The moneys in question represented and in fact were collections from warrants or checks issued by the government to the veteran in payment of his compensation and insurance. This court held that under the provisions of the 1935 Act this tax could not be collected for the reason that the money while on deposit in the bank had not lost its character as "payments of benefits." The court held that "payments of benefits" were exempt both before and after receipt by the beneficiary as expressly provided in the 1935 Act, and reasoned that the beneficiary was not bound to carry the money around in his pocket but might deposit the same in a bank. This court cited the case of *Trotter* v. *Tennessee* with approval, and indicated that it would adhere to its decision in the *Trotter* case to the effect that when "payments of benefits" are invested they lose their character as such and the exemption contained in the statute then is at an end. At 81 Law Ed., page 626, Law Ed., the court says:

> "We think it clear that the provisions of the latter Act was intended to clarify the former rather than to change its import, and it was with that purpose that it was made retroactive."

The court continues, on page 627 Law Ed.:

> "The provision of the Act of 1935 that the exemption should not apply to property purchased out of moneys received from the government shows the intent to deny exemption to investments, as was ruled in the *Trotter* case . . .
>
> "In order to carry out the intent of the statute the avails of the government warrants or checks must be deemed exempt until they are expended or invested."

It is submitted that the court held and intended to hold that when the "payments of benefits" are invested the

exemption comes to an end. Further, that when it comes to an end it comes to an end for all purposes. That when "payments of benefits" are invested they lose their quality as such and are subject to taxation and to the claims of creditors. By the plain terms of the statute "payments of benefits" are exempt both from taxation and from claims of creditors. Likewise, the plain terms of the statute grant no exemption to investments, business enterprises, or property purchased in part or wholly out of "payments of benefits."

It is submitted that this is the rational of the decisions of this court in the cases of *Trotter* v. *Tenn., supra,* and *Lawrence* v. *Shaw, supra.*

POINT III.

The Language of the Statute (38 U. S. C. A. 454(a)) Is Plain. There Is, Therefore, No Room for Resort to Reports of Legislative Committees, or Other Extrinsic Aids for the Purpose of Construing This Act.

As heretofore observed, the statute involved in this case grants an exemption to "payments of benefits." Giving the words "payments of benefits" their usual and ordinary meaning they can mean nothing more than moneys paid to the veteran by the United States Government. No mention is made or exemption granted to investments in the statute. The statute involved in the present case, therefore, comes within the rule so often laid down by this court that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, the court will enforce the act as written. In such case the courts will not consider the reports of legislative committees or other extrinsic aids to construction for the reason that the duty of construction does not arise. In *U. S.* v. *Mo. & P. R. Co.*, 278 U. S. 269, 49 Sup. Ct. 133, 73 L. Ed. 322 (1928), at pages 376-7 L. Ed. the court says:

"The language of that provision is so clear and its meaning so plain that no difficulty attends its construction in this case. Adherence to its terms leads to nothing impossible or plainly unreasonable. We are therefore bound by the words employed, and are not at liberty to conjure up conditions to raise doubts in order that resort may be had to construction. It is elementary that where no ambiguity exists there is no room for construction. Inconvenience or hardships, if any, that result from following the statute as written, must be relieved by legislation.

* * * * * * *

Appellants seek to support the view for which they contend by some of the legislative history of the enactment and especially by explanatory statements made by Senator Elkins in connection with the report of the majority of the Senate committee submitting the bill for the act in question. Where doubts exist and construction is permissible, reports of the committees of Congress and statements by those in charge of the measure and other like extraneous matter may be taken into consideration to aid in the ascertainment of the true legislative intent. But where the language of an enactment is clear and construction according to its terms does not lead to absurd or impractical consequences, the words employed are to be taken as the final expression of the meaning intended. And in such cases legislative history may not be used to support a construction that adds to or takes from the significance of the words employed."

In *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, 53 Sup. Ct. 42, 77 L. Ed. 175 (1932), at pages 178-9 L. Ed., this court says:

"Our attention is called to the fact that the House Committee on Interstate and Foreign Commerce, in reporting the bill which afterwards became the Act in question (H. R. 850, 62d Cong., 2nd Sess., pp. 2-4) agreed with the view that the authority to make rules and regulations was confined to the establishment of tolerances and exemptions; and that the Senate com-

mittee on Manufacturers (S. R. 1216, 62d Cong., 3rd Sess., pp. 2-4), reported to the same effect. In proper cases, such reports are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. They cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms . . . like other extrinsic aids to construction, their use is 'to solve, but not to create, an ambiguity' . . . If the language be clear it is conclusive. There can be no construction where there is nothing to construe." *Caminneti* v. *U. S.*, 242 U. S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1916).

Standard Fashion Company v. *Magrane-Houston Co.*, 258 U. S. 346, 42 Sup. Ct. 360, 66 L. Ed. 653, 657 (1921).

Van Camp & Sons v. *American Can Company*, 278 U. S. 245, 49 Sup. Ct. 112, 73 L. Ed. 311 (1928).

Petitioner refers at length in his brief to the reports of the sub-committee of the House, and to the reports of the Finance Committee of the Senate. It is submitted that the language of the statute involved in the present case (38 U. S. C. A. 454(a)) is clear, that no duty to construe the statute arises, and that therefore the reports of the sub-committee of the House and Finance Committee of the Senate have no bearing on the question to be determined in the instant case.

POINT IV.

If the Court Is of the Opinion That It Is Proper to Resort to Extrinsic Aids, That Is, to the Judicial and Legislative History of the Statute, and to the Canons of Statutory Construction, These Support Respondent's Position That the Investments of the Petitioner Are Subject to an Execution Issued on Respondent's Judgment.

(1) The judicial and legislative history of Title 38 U. S. C. A., Sec. 454(a), show that under its terms the investments of petitioner are intended to be subject to execution issued upon respondent's judgment.

R. S. Sec. 4747, 38 U. S. C. A. 54, Act of March 3, 1873, C. 234, Paragraph 33, 17 Stat. 576, was in force from the date of its enactment in 1873, until it was repealed by the Act of 1935, 38 U. S. C. A. 454(a) Pub. No. 262, 74th Cong., Secs. 3 and 5, Act of Aug. 12, 1935, 49 Stat. 607. R. S. 4747 read:

> "54. Attachment, levy, or seizure of moneys due pensioners prohibited. No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner."

R. S. 4747 applied to moneys due a pensioner, and was construed by this court in *McIntosh* v. *Aubrey*, 185 U. S. 122, 46 L. Ed. 834, 22 Sup. Ct. 561 (1901). In the *McIntosh* case this court held that real estate purchased with pension money was subject to execution and sale at the instance of a judgment creditor of the pensioner. The court says, at pages 837-8 L. Ed.:

> "The language of the section of itself seems to present no difficulty, and if doubt arises at all it is only on account of the decisions of courts whose opinions are always entitled to respect. *Crow* v. *Brown*, 81 Iowa 344, 11 L. R. A. 110, 46 N. W. 993; *Yates County Nat. Bank* v. *Carpenter*, 119 N. Y. 550, 7 L. R. A. 557, 23 N. E. 1108. But, notwithstanding, we think the purpose of Congress is clearly expressed. It is not that pension money shall be exempt from attachment in all of its situations and transmutations. It is only to be exempt in one situation, to-wit, when 'Due or to become due.' From that situation the pension money of plaintiff in error had departed.
>
> "The simplicity and directness of the statute are impaired by attempts to explain it by the use of other

terms than its own. That money received is not money due, and that real estate is not money at all would seem, if real distinctions be regarded, as obvious enough, without explanation."

Hence from 1901, the date of the *McIntosh* case, until the enactment of the 1935 Act, as to pensions paid by the United States Government to pensioners, there was no question but that property purchased with the pension money was subject to execution at the instance of the creditors of the pensioner.

On June 7, 1924, Sec. 454, Title 38 U. S. C. A. (Act of June 7, 1924, C. 320, Paragraph 22, 43 Stat. 613) was enacted. This section was a part of the Act entitled "World War Veterans' Act, 1924," 38 U. S. C. A. 421, Act of June 7, 1924, C. 320, Paragraph 1, 43 Stat. 607, and by its terms applied only to "compensation, insurance, and maintenance and support allowances payable to World War veterans under Parts II, III, and IV of said Act." The state courts did not agree on the question of whether permanent investments of the World War veteran were exempt from execution under the provisions of Sec. 454, 38 U. S. C. A. The Supreme Court of North Carolina, in *State Hospital* v. *Bank*, 207 N. C. 697, 178 S. E. 487 (1934), held that investments of the veteran were not exempt from the claims of creditors. This court denied certiorari. 295 U. S. 761, 55 Sup. Ct. 921, 79 L. Ed. 1704. In *Payne* v. *Jordon*, 36 Ga. App. 787, 138 S. E. 262 (1927), the Georgia court held that property of a World War veteran purchased with moneys paid him by the United States was not subject to the claims of creditors. As pointed out in petitioner's brief, some other state courts followed the decision in *Payne* v. *Jordon, supra.* However, the case of *Payne* v. *Jordon, supra,* was expressly disapproved in *Trotter* v. *Tennessee, supra,* and therefore cases of like effect were also necessarily disapproved. *Trotter* v. *Tennessee, supra,* was decided in 1933, and construed the 1924 Act (38 U. S. C. A. 454). As hereinabove pointed out, respondent submits that under the holding in the *Trotter*

case, investments of a World War veteran would be subject to the claims of his creditors.

When the sub-committee of the House came to consider the amendment of R. S. 4747, and 38 U. S. C. A. 454, some benefits paid to veterans were not covered by the provisions of either of these statutes. The report of the sub-committee of the Committee on World War Veterans' Legislation of the House of Representatives, made under authority of H. R. 409, 73rd Cong., page 75, submitted Jan. 8, 1935, reads in part:

> "There is a need for amended legislation to bring within the terms of existing laws, all benefits paid to fiduciaries of veterans under the various pension laws, some of which are not now covered."

This same report reads in part, on page 78:

> "There is need for amendatory legislation to replace Sec. 22, World War Veterans' Act; Sec. 454, Title 38 U. S. C., and Sec. 4747, Revised Statutes, in order that the same protection, immunity, and exemption may be provided for all *benefits* (Italics ours)."

It is apparent that when the sub-committee of the House came to consider amendments to R. S. 4747, and to Sec. 454, 38 U. S. C. A., it was considering one statute (R. S. 4747) under which this court had held that property purchased with pension money was not exempt from the claims of creditors (*McIntosh* v. *Aubrey, supra*); one statute (Sec. 454, Title 38 U. S. C.) in which the state courts had been divided on the question of whether investments of a veteran were subject to claims of creditors, and under which this court had expressly disapproved in (*Trotter* v. *Tennessee, supra*) the decision of a state court (*Payne* v. *Jordon, supra*) which held that property purchased with "payments of benefits" was exempt from the claims of creditors. The sub-committee was also considering various other payments to veterans which were not included in either R. S. 4747

or Sec. 454, Title 38 U. S. C. In addition, the sub-committee was aware that it was proposing legislation to affect eighty-two thousand estates of incompetent veterans (Hearings before the Committee on World War Veterans' Legislation, and Sub-Committee on Hospitals, H. R. 409, 73rd Cong., Part I, page 18 quoted in the Appendix hereto), which involved estates amounting in round figures to $128,000,000.00 of which $102,000,000.00 was invested. (The Report of Sub-Committee of the Committee on World War Veterans' Legislation of the House of Representatives, under H. R. 409, 73rd Cong., page 63, quoted in the Appendix hereto).

In view of these facts, the sub-committee states on page 79 of its report:

> "Several recommendations have been received by this sub-committee from the Chief Attorneys of the Veterans' Administration that this statute should be amended and the regulations of the administration provide for strict application.
>
> "It is therefore proposed that the following section be enacted to replace Sec. 22, World War Veterans' Act, Sec. 454, Title 38 U. S. C., and Sec. 4747, R. S.:
>
> "Sec. 3. *Payments of benefits due* or to become due shall not be assignable, and *such payments* made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not *attach* to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation *extend* to any property purchased in part or wholly out of such payments. Sections 4747, Revised Statutes, and 22 World War Veterans' Act, are repealed, and all other Acts inconsistent herewith are modified accordingly.
>
> "The provisions of this section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Title III of the World War Veterans' Act of his interest in such

insurance to any other member of the permitted class of beneficiaries." (Italics ours.)

It is submitted that had the sub-committee intended to change the rule laid down by this court in *McIntosh* v. *Aubrey, supra,* and exempt from the claims of creditors $102,000,000.00 invested for the various incompetent veterans, as well as all investments made by competent veterans, it would have said so in language so plain that no one could misunderstand it. It is further submitted that when the sub-committee proposed a statute exempting "benefit payments" which statute did not mention investments, the sub-committee clearly did not intend to change the rule laid down in *McIntosh* v. *Aubrey, supra,* and *Trotter* v. *Tenn., supra,* and did not intend to exempt investments of veterans from the claims of the veterans' creditors.

The report of the Finance Committee of the Senate, No. 1072, S. 74th Cong., p. 67, reads in part as follows:

"(11) The next change is Section 3 of the bill which proposes a new section to replace Section 22 of the World War Veterans' Act, 1924, and Section 4747 of the Revised Statutes. The purpose of this new section is two-fold: first, to make uniform the law with respect to exemptions granted beneficiaries, and second to clarify the language with respect to such exemptions. Under the present laws, as interpreted by the Secretary of the Treasury, beneficiaries receiving payments under the World War Veterans' Act and amendments thereto do not have to include such payments in their Federal income-tax returns because of the exemption contained in Section 22; whereas those receiving pensions have to include such pensions in their income-tax returns; and, unless otherwise exempt, must pay a tax thereon.

"The two sections have also been construed differently not only by the highest appellate courts of the states, but also by the Supreme Court of the United States. *For example, it has been held that 'payments due or to become due' of Section 4747, Revised Statutes,*

refer to the payments before they are made, and that the exemptions of said section do not extend to payments made to a beneficiary or to the guardian of a beneficiary. (See *McIntosh* v. *Aubrey* (185 U. S. 122, 46 L. Ed. 834).) Some state supreme courts have held that the language of Section 22 should be construed similarly. (See *State ex rel Smith* v. *Bd. of Com. of Shawnee Co.* (132 Kan. 233, 294 Pac. 915)), and although the Supreme Court of the United States denied certiorari in the case just cited it has not passed directly upon that specific question, but has indicated that it would not follow this doctrine with respect to any exemption other than that relating to taxation. (See *Trotter* v. *Tenn.* (178 L. Ed. 128) and *Pagel* v. *Pagel* (78 L. Ed. 627).) The language of the proposed amendatory section will, it is believed, *clarify these disputed points and will place the law in conformity with the decisions of the Supreme Court on the subject.* It will make the law uniform as to all beneficiaries." (Italics supplied.)

It will be noted that this report states that the provisions of Section 4747 did not apply to *payments* made to a beneficiary or to the guardian of a beneficiary. Nothing is said about investments. It will also be noted that this report states that the statute in question will clarify the disputed points and will *place the law in conformity with the decisions of the Supreme Court*, that is, in accordance with the decisions of this court in *McIntosh* v. *Aubrey*, *supra*, which held that property purchased with pension money was not exempt from claims of creditors, and in accordance with *Trotter* v. *Tenn.*, *supra*, which as respondent submits, also indicates that investments of a veteran are subject to the claims of his creditors. Nowhere in this report of the Senate Committee are investments mentioned, nowhere does the report state that the Act will change the rule laid down in *McIntosh* v. *Aubrey*, *supra*. If the Senate Committee had contemplated any such change it would have said so.

Petitioner therefore submits that the judicial and legislative history of Sec. 454(a), 38 U. S. C., clearly shows that

it was understood and intended that investments of a veteran were to be subject to the claims of his creditors.

(2) The statute involved in the present case (38 U. S. C. 454(a)) is in derogation of the creditors' common law right to subject the property of the debtor to sale under execution to satisfy the debt. Therefore the statute cannot be extended beyond the plain words used.

Under the common law every court had the power to enforce its decrees and judgments by execution, or other proper process. This power is inherent in every court, for otherwise no court could function. A court which could not enforce its decrees, orders and judgments by execution or other final process would be a farce. Under the common law every creditor had a right to the issuance of the final process of the court to enforce his money judgment against the judgment debtor, and to subject the property of the judgment debtor to sale under execution to satisfy the judgment. Section 454(a), Title 38 U. S. C., limits and abridges this common law right and therefore cannot be extended beyond its plain terms. This court said in *The Bank of Columbia* v. *Oakley*, 4 Wheat. 235, 4 L. Ed. 559 (1819), at page 561 Law Ed.:

> "We readily admit that the provisions of this law are in derogation of the ordinary principles of private rights, and, as such, must be subjected to a strict construction, and under the influence of this admission, will proceed to consider the several questions which the case presents."

In *Brunswick* v. *National Bank*, 192 U. S. 386, 24 Sup. Ct., 315, 48 L. Ed. 491 (1903), at page 493 L. Ed., this court says:

> "This additional liability of a stockholder depends on the terms of the statute creating it, and as it is in derogation of the common law, the statute cannot be extended beyond the words used."

In *Texas & P. R. Co.* v. *Abilene Cotton Oil Company*, 204 U. S. 426, 27 Sup. Ct. 350, 51 L. Ed. 553 (1906), at page 557 Law Ed. this court says:

> "In testing the correctness of this proposition we concede that we must be guided by the principle that repeals by implication are not favored, and, indeed, that a statute will not be construed as taking away a common law right existing at the date of its enactment, unless that result is imperatively required; that is to say, unless it be found that the pre-existing right is so repugnant to the statute that the survival of such right would in effect deprive the subsequent statute of its efficacy; in other words, render its provisions nugatory."

Respondent submits that no mention is made of investments in the statute in question, that the statute grants no exemption to investments, and that therefore, under the rules laid down above, the statute cannot be extended beyond its plain terms to include investments.

POINT V.

"Payments of Benefits" or Moneys Paid the Veteran by the United States Government Are All That the Statute (38 U. S. C. A. 454(a)) Intends to Exempt and Protect. These Are Amply Protected Both as to Competent and Incompetent Veterans, by Decisions of This Court and by Laws of the State of North Carolina.

(1) Incompetent veterans.

Petitioner on pages 27-31 in his brief, argues that in North Carolina protection which is extended to a competent veteran is denied to an incompetent veteran, and cites Michie's Code of N. C., Chap. 40-a, Sec. 2202 (13). This section (as amended is a part of Chapter 33, Pub. Laws of North Carolina, 1929. Section 21 of this chapter reads:

"That this Act shall be in force and effect from and after its ratification.

"Ratified this, the 18th day of Feb., A. D., 1929."

This entire chapter, that is, Chapter 33, Pub. Laws of North Carolina, 1929, was enacted by North Carolina legislature, at the instance of the Veterans' Administration. Hearings before the Committee on World War Veterans' Legislation and Sub-Committee on Hospitals, House of Representatives, 73rd Cong., under H. R. 409, Part I; pages 3 to 4, May 31, June 1, 4, 5, 6, 7, 9, 1934. On page 3-4 the reports of the hearings read:

"GENERAL HINES: . . . We found in the inception of our work that many states did not have what we afterwards developed through a uniform guardianship law, and that is, a uniform practice in dealing with those estates. We undertook, with the assistance of the American Bar Association, to have a uniform guardianship law drawn up and introduced in the state legislatures. That uniform guardianship law has been adopted by thirty-five states of the Union, and ten other states have laws which are just as effective as the uniform guardianship law."

"THE CHAIRMAN: Will you put in the record at this point a statement showing the thirty-five states that have adopted that uniform guardianship law? . . .

"GENERAL HINES: I will be glad to do so . . .

"The uniform guardianship law has been adopted by the following thirty-five states . . . North Carolina, Feb. 18, 1929."

It is apparent that Michie's North Carolina Code, Chapter 40-a, which includes Section 2202 (13), cited by petitioner, was drawn up and its enactment procured by the Veterans' Administration, who, above all others, have the interest of the veteran at heart. It is also apparent that this statute constitutes no attempt on the part of the State of North Carolina to deny protection to an incompetent veteran which is extended to a competent veteran. It is

only reasonable to assume that this statute was drawn up and its enactment secured by the Veterans' Administration for the purpose of protecting the interest of the incompetent veterans. It is also reasonable to assume that it was drawn up and its enactment secured with a full knowledge of the other laws of the State of North Carolina relating to incompetents, and with the full knowledge that this Act, together with the other laws in force in North Carolina, would be more than ample to secure to incompetent veterans the money necessary to support them and their families. In this the Veterans' Administration was entirely correct. In North Carolina the property of an incompetent or insane person, in whatever shape, or form, cannot be reached for the payment of the debts of such insane person unless and until a sufficient amount of the incompetent's property is first set aside for the support and maintenance of the incompetent and the dependent members of his family. This has long been the law in North Carolina, and is clearly held in *Lemly* v. *Ellis*, 146 N. C. 221, 59 S. E. 683 (1907). In this case plaintiff brought an action for the breach of a warranty arising out of a sale of real property from dependant to plaintiff in the year 1900. When the action was brought the defendant was found to be insane and a guardian ad litem was appointed for him. Plaintiff obtained a money judgment for damages, and the court held that before the judgment could be satisfied, a sufficient amount of defendant's property must be set aside to provide for the support and maintenance of defendant and his family. The court further held that if all of defendant's property was necessary for the support of defendant and his family, then nothing could be applied on the payment of plaintiff's judgment. The court says, at pages 222-4, N. C.:

> "Defendant further excepts to the refusal of the court below to set aside a portion of the attached property for the support of defendant and his family, it having been made to appear that defendant is now in-

sane and has a wife and infant child resident in the state, and there being evidence tending to show that defendant is insolvent. 'It is an established principle with us that the property of an insane person, certainly where same is in custody of the court, will not be applied to the payment of his general indebtedness, as distinguished from claims for his present maintenance, until a sufficient fund is set aside for the support of the lunatic and his family, including his wife and infant children, who are a part of his household. *In re Latham*, 39 N. C. 231; *Adams* v. *Thomas*, 81 N. C. 296. In *Latham's* case the doctrine and the reason upon which it rests is stated by *Daniel, J.*, as follows: 'But the better opinion is, that the said statute was not introductive of any new right, but was only declaratory of the common law. *Beverly's* case, 4 Steph. 126, 127; Ves. Jr. 71 Bac. Abr., title Idiots and Lunatics, C., Shelford, 12. And we take it that the King, as *parens patriae*, by the common law, had the protection of all his subjects, and that in a more particular manner he is to take care of all those who, by reason of their imbecility and want of understanding, are incapable of taking care of themselves. Bac. Abr. Idiots and Lun. C. All the lunatic's estate has been converted into money, and only the sum of $942.14 is now within the reach of this court. We think that this fund must be retained by the committee, not to pay his balance or the debts of any of the creditors, but for the purpose of maintaining the lunatic and his wife and infant children. That the court must reserve a sufficient maintenance for the lunatic before making an order for payment of debts, or allowing to the committee sums already applied by him to that purpose, is clear from the nature of the jurisdiction in lunacy, as well as from the decisions. *In Ex parte Hastings*, 14 Ves. 182, *Lord Eldon* said he could not pay a lunatic's debts and leave him destitute, but must reserve a sufficient maintenance for him; and in *Tally* v. *Tally*, 22 N. C. 385, that case is cited with approbation by this court.''

This rule applies even though the debt sought to be collected was incurred before the person in question became

insane. This is squarely held in *Read* v. *Turner,* 200 N. C. 773, 158 S. E. 475 (1931). In *Read* v. *Turner* the debts sought to be collected were incurred before the person in question became insane. At page 778, N. C., the court says:

> "We quote with approval the language of *Dillard, J.,* in *Adams* v. *Thomas,* 81 N. C. 296, as follows:
>
> " 'Property of a lunatic put into the hands of a committee is to be regarded as in custodia legis, and no creditor can reach it for a pre-existing debt, except through the order of the Superior Court, and that order is never made until first a sufficiency is ascertained and set apart for his own maintenance and that of his family, if minors, and this administration of the estate is based on the idea that the sovereign owes the duty to a person thus unfortunate to devote his property primarily to his maintenance and to protect him against his existing creditors, except in subordination thereto.' "
>
> *Reynolds* v. *Reynolds,* 208 N. C. 254, 265; 180 S. E. 80 (1935).
>
> *Adams* v. *Thomas,* 81 N. C. 296 (1879).
>
> *Blake* v. *Respass,* 77 N. C. 193 (1877).

Under the decision of this court in *Lawrence* v. *Shaw, supra,* the money of an insane veteran while on deposit in a bank is exempt from taxation and from the claims of creditors. Even under the North Carolina statute, cited by petitioner (Michie's N. C. Code, Sec. 2202 (13)), it is submitted that the guardian of an incompetent veteran could keep on deposit at all times sufficient funds to take care of the veteran and his family. No duty to invest would arise until the guardian had on hand more than sufficient funds to take care of the incompetent veteran. However, assuming that the guardian has on hand more than a sufficient amount of money to provide for the veteran under the terms of the North Carolina statute (Michie's N. C. Code, Chap. 40-a, Sec. 2202 (13)) it would then become his duty to invest the same. Under the North Carolina cases hereinabove cited, no matter how much the guardian had invested, or in

what he had invested it, no creditor could touch these investments until the Superior Court of North Carolina had first inquired into the amount of property owned by the incompetent, and set aside enough of his property to care for the incompetent himself, and the dependent members of his family. Where is the danger that some creditor of an incompetent veteran will levy on the side of meat or the other necessities of life which the veteran or his guardian have purchased, and leave the veteran or his family to starve? It is only where there is a surplus, more than enough to care for the veteran and his family, that creditors can be paid. It is submitted that there is no good reason why an incompetent veteran, who has a surplus in investments over and above that necessary for the support of himself and his family, should not pay his just and honest debts.

It is to be noted in the present case that petitioner and his guardian do not even contend that petitioner does not have property amply sufficient to take care of petitioner, and also to pay respondent's judgment in full. Nowhere is it suggested that payment of respondent's judgment will deprive petitioner of any of the necessities of life or in any way interfere with the proper care, support, and maintenance of petitioner. This being so, why should not respondent's judgment be paid?

Petitioner makes no distinction between claims of creditors of the veteran, but contends that the investments of the veteran are exempt from *all* of the claims of his creditors. If petitioner's contention is correct, a person who had taken an incompetent veteran into his home, clothed him and cared for him, furnished the veteran with food, clothing, and all of the other necessities of life, could not collect his claim for such services against the incompetent veteran, even though the veteran had more than enough property to take care of himself and his family and had a surplus of investments totalling many thousands of dollars. Surely Congress could have intended no such result.

(2) Competent veterans.

As pointed out in petitioner's brief (pages 27, 28) a competent veteran could keep all of the money received by him on deposit in a bank, subject to his check, and the money would not be subject to taxation or claims of his creditors. Surely, this in itself is a sufficient protection to any competent veteran. The competent veteran is certainly in no danger of starving or freezing as long as his money, received from the United States Government, is not subject to the claims of his creditors. In addition, the competent veteran (as well as the incompetent veteran) in North Carolina, has a $500.00 personal property exemption and a $1,000.00 real estate and homestead exemption. Article 10, Sec. 1, 2, 3, Constitution of North Carolina (set out fully in the appendix hereto). It is submitted that the competent veteran under the decision of this court in *Lawrence* v. *Shaw, supra*, and under the provisions of the North Carolina Constitution hereinabove cited, is in no danger of starving or freezing, or of having any of the necessities of life taken away from him by a creditor.

CONCLUSION.

The very term "investments" indicates that the veteran has a surplus over and above that needed for food and clothing and for the necessities of life, otherwise, there would be nothing to invest. It is submitted that there is no good reason why this surplus should be exempt from execution and from the just claims of the veterans' creditors. Surely the just debts of the veteran should stand, in the eyes of the law, as nearly as possible on an equal footing with the just debts of every other person.

Respondent therefore respectfully submits that for the reasons hereinabove set forth, the judgment of the Supreme Court of North Carolina should be affirmed.

FREDERICK D. HAMRICK,
Attorney for Respondent.

Of Counsel:
FREDERICK D. HAMRICK, JR.

APPENDIX.

NORTH CAROLINA CONSTITUTION

ARTICLE X

Homesteads and Exemptions

Section 1. *Exemptions of personal property.* The personal property of any resident of this state, to the value of five hundred dollars, to be selected by such resident, shall be and is hereby exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Section 2. *Homestead.* Every homestead, and the dwellings and buildings used therewith, not exceeding in value one thousand dollars, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city, town, or village with the dwelling and buildings used thereon, owned and occupied by any resident of this state, and not exceeding the value of one thousand dollars, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes or for payment of obligations contracted for the purchase of said premises.

Section 3. *Homestead exemption from debt.* The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of his children, or any of them.

Hearings before the Committee on World War Veterans' Legislation, and Sub-Committee on Hospitals, H. R. 409, 73rd Cong., Part I, page 18:

"THE CHAIRMAN: General, let me ask you one more question: I understood you to say that there were 82,000 of those guardianships?

"GENERAL HINES: That is right."

Report of the sub-committee of the Committee on World War Veterans' Legislation, of the House of Representatives, under H. R. 409, 73rd Cong., page 63:

"The following will show the total amount of estates involved, the amount invested legally, the amount invested illegally, deposits in banking institutions, and total amount lost on investments for the fiscal year ending June 30, 1934, as shown by the consolidated report of the Veterans' Administration:

Amount of estates	$128,948,267.17
Estates invested	102,573,024.57"

SUPREME COURT OF THE UNITED STATES.

No. 541.—October Term, 1938.

John Carrier and J. Harvey Carpenter, Guardian of John Carrier; Incompetent Veteran, Petitioners,
vs.
Curley Bryant.

On Writ of Certiorari to the Supreme Court of the State of North Carolina.

[April 17, 1939.]

Mr. Justice McReynolds delivered the opinion of the Court.

The Supreme Court, North Carolina, ruled that negotiable notes and United States bonds purchased, and held as investments, for an incompetent World War veteran by his guardian out of "payments of benefits" authorized under laws relating to such veterans, were subject to execution upon a judgment against the incompetent. Petitioners challenge that view and claim immunity under section 3 Act August 12, 1935 (c. 510, 49 Stat. 607, 609; 38 U. S. C. A. sec. 454a).

"Sec. 3. Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws, nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments. Section 4747 of the Revised Statutes and section 22 of the World War Veterans' Act, 1924, are hereby repealed, and all other Acts inconsistent herewith are hereby modified accordingly. The provisions of this section shall not be construed to prohibit the assignment by any person, to whom converted insurance shall be payable under title III of the World War Veterans' Act, 1924, of his interest in such insurance to any other member of the permitted class of beneficiaries.

"Sec. 5. That this Act shall take effect and be in force from and after its passage, but the provisions hereof shall apply to payments made heretofore under any of the Acts mentioned herein."

The conclusion below is supported by *McCurry* v. *Peek*, (1936) 54 Georgia App. 341, 187 S. E. 854, the only other opinion squarely upon the point here involved which has been called to our attention.

The language of section three, although not entirely felicitous, conflicts with the petitioners' insistence.

The first sentence grants exemption from taxation, claims of creditors, attachment, levy or seizure under any legal process whatever. The things exempted are "payments of benefits" due or to become due either before or after receipt by the beneficiary.

Investments purchased with money received in settlement of benefits are not such payments due or to become due. Accordingly, giving the words employed their ordinary meaning, the notes and bonds in question are not exempted by the first sentence in section three. It left them, like other property, subject to taxation, claims of creditors, and legal process.

The second sentence in the section clearly recognizes the distinction between benefit payments and property purchased with money therefrom. It declares the exemption provisions in the first sentence shall not attach to claims of the United States; also that exemption from taxation shall not extend to property purchased out of benefit payments. Nothing is said concerning claims of creditors. Nevertheless, petitioners seem to maintain immunity from these must be inferred. But a mere declaration that investments always subject to taxation shall not enjoy exemption therefrom affords no basis for holding them free from claims of creditors. Although the first sentence extended no immunity to investments, apparently out of abundant caution, the second declared them subject to taxation.

We find nothing in the history or supposed purpose of the enactment adequate to support a construction not in accord with the ordinary import of the words employed.

Under *Spicer* v. *Smith*, (1933) 288 U. S. 430, 434, payment of benefits to the guardian vested title in the ward. The exemptions of the statute would not be different if the ward had personally received the payments.

Section 4747 Revised Statutes, Act March 3, 1873 (38 U. S. C. A. sec. 54), remained in force until repealed by Act August 12, 1935. It provided—

"No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the

Pension-Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner."

This section was considered in *McIntosh* v. *Aubrey*, (1902) 185 U. S. 122, 124, where it was unsuccessfully claimed that property purchased with pension money could not be seized under an execution. It was there said—

"The language of the section of itself seems to present no difficulty, and if doubt arises at all it is only on account of the decisions of courts whose opinions are always entitled to respect. . . . But notwithstanding, we think the purpose of Congress is clearly expressed. It is not that pension money shall be exempt from attachment in all of its situations and transmutations. It is only to be exempt in one situation, to wit, when 'due or to become due.' From that situation the pension money of plaintiff in error had departed."

Section 22 World War Veterans' Act, 1924, c. 320, 43 Stat. 607, 613 (38 U. S. C. A. sec. 454), repealed by Act August 4, 1935, provided—

"That the compensation, insurance, and maintenance and support allowance payable under Titles II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Titles II, III, or IV; and shall be exempt from all taxation: *Provided*, That such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Titles II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable. . . ."

Trotter v. *Tennessee*, (1933) 290 U. S. 354, 356-357, construed this section. A veteran had purchased land in Tennessee with money received as compensation, and claimed exemption from taxation. We said—

"The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. McIntosh v. Aubrey, 185 U. S. 122. We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. . . . Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings. The statute speaks of 'compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises."

In 1935 Congress gave much consideration to the exemption which should be accorded to veterans. The outcome is shown by sections three and five Act August 12, 1935 *ante*.

Section three of that Act came under review in *Lawrence* v. *Shaw*, (1937) 300 U. S. 245, 249-250. Exemption was successfully claimed for bank deposits standing in the name of a veteran's guardian upon the view that such deposits, made in the ordinary course and subject to demand for the veteran's use, should be treated as if money in his hands.

"The World War Veterans' Act, 1924, provided that the compensation and insurance allowances should be 'exempt from all taxation.' The Act of 1935 is more specific, providing that the payments shall be exempt from taxation and shall not be liable to process 'either before or after receipt by the beneficiary.' There was added the qualification that the exemption should not extend 'to any property purchased in part or wholly out of such payments.' This more detailed provision was substituted for that of the earlier Act and was expressly made applicable to payments theretofore made. We think it clear that the provision of the later Act was intended to clarify the former rather than to change its import and it was with that purpose that it was made retroactive. . . . The provision of the Act of 1935 that the exemption should not apply to property purchased out of the moneys received from the Government shows the intent to deny exemption to investments, as was ruled in the *Trotter* case."

The questioned judgment must be affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.